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ABSTRACT

These lesson plans on the First Amendment are designed to help secondary school students to understand the history and meaning of the First Amendment and its importance in today's society. The manual has two sections, one for middle school, the other for high school. Ten lessons for middle school students cover the following topics: (1) Throwing our rights away; (2) Using the First Amendment; (3) Free expression: what should be protected?; (4) Expression at school; (5) Religion at school; (6) Privacy and the First Amendment; (7) Your right to know: the privacy triangle; (8) Should the Bill of Rights be amended?; (9) First Amendment rights; and (10) The First Amendment in posters (evaluation). Subjects covered by the 10 lessons for high school students are: (1) Students and rights: beliefs and realities; (2) First Amendment freedoms survey; (3) Life without the First Amendment; (4) An established church in America?; (5) Free exercise of religion; (6) Freedom of speech; (7) Freedom of the press; (8) Freedom of assembly; (9) Petitioning government; and (10) The First Amendment in its third century. Each lesson contains an introduction and information on objectives, time required, materials and preparation involved, procedure, and extension/enrichment activities. A bibliography follows each set of lessons. Both the middle school and high school sections of this manual provide a description of the Education for Freedom Project, a First Amendment background paper, and a general introduction to the materials used. (DB)

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EDUCATION FOR FREEDOM

LESSONS ON THE FIRST AMENDMENT FOR SECONDARY SCHOOL STUDENTS (6-12)

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EDUCATION FOR FREEDOM

LESSONS ON THE FIRST AMENDMENT FOR MIDDLE SCHOOL STUDENTS

BY BARBARA MILLER
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The First Amendment

*Congress shall make no law
respecting an establishment
of religion, or prohibiting the
free exercise thereof; or
abridging the freedom of
speech, or of the press, or the
right of the people peaceably
to assemble, and to petition
the government for a redress
of grievances.*

The Education for Freedom Project

The First Amendment Congress is a coalition of communications organizations created in 1979. It was established by 12 media associations concerned about the preservation of First Amendment rights; membership has grown since 1979 to include four additional voting members and numerous associate members.

The First Amendment declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." These freedoms assure Americans a government that is responsible to its citizens and responsive to their wishes. These freedoms are the basic rights of all citizens; if they are to be preserved, the vigilance and support of all citizens is required.

As part of its commitment to making all Americans aware of the importance of their First Amendment freedoms, the First Amendment Congress has undertaken the Education for Freedom Project. The goal of this project is to develop and disseminate curriculum materials for teaching about the First Amendment at all levels. This package of materials for middle school students represents one part of the Education for Freedom Project's efforts. Similar packages have also been developed for primary, intermediate, and high school students.

While elementary teachers may initially feel that concepts related to the First Amendment would be better introduced at later grades, research indicates that learning at all levels—early childhood, late childhood and early adolescence, and late adolescence and adulthood—contributes to giving individuals the values, knowledge, and skills needed for citizenship in a democratic society. As Parker and Jarolimek have pointed out, "The emergence of citizens who are informed, skilled participants in democratic processes, and who are guided in their participation by a disciplined commitment to democratic values does not just happen as a result of ordinary living...political learning occurring in early childhood establishes the basic orientations of a person's political identity and the later political learning of adolescence and adulthood adds knowledge and skills. A foundation is laid in the early years on which a structure is later built."[1]

The project materials will address three critical goals or outcomes:

1. Students will understand the history and meaning of the First Amendment and its importance in today's society.

2. Students will understand that the First Amendment belongs to each individual, not to any one segment of society or institution.

3. Students will understand the importance of protecting their First Amendment freedoms through exercising their rights and responsibilities as citizens in our democracy.

Lessons throughout the materials are keyed to these project outcomes.

Major funding for this project was provided by the Knight Foundation. Additional contributions were provided by: The Hearst Corporation, Samuel I. Newhouse Foundation, Inc., Scripps Howard, Star Tribune/Cowles Media Company, and The Times Mirror Foundation.

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[1] Walter Parker and John Jarolimek, *Citizenship and the Critical Role of the Social Studies* (Boulder, CO: Social Science Education Consortium and Washington, DC: National Council for the Social Studies, 1984), pp. 23, 26.

Background on the First Amendment

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

These 45 words—the First Amendment to the U.S. Constitution—embody some of our most important ideas about the meaning of liberty. Isidore Starr, a nationally recognized leader in the fields of law-related and citizenship education, has described the importance of the First Amendment as follows: "Remove the First Amendment from the United States Constitution and you strike out the very means of testing the other rights and of protesting abuses of government."[2]

The First Amendment includes six clauses that cover five basic areas: freedom of religion, freedom of speech, freedom of the press, freedom of assembly, and the right to petition the government for redress of grievances. It may be helpful to briefly define each of these rights.

Freedom of Religion

Two clauses in the First Amendment deal with freedom of religion, and both have given rise to many court cases and controversies. The first, called the "establishment clause," is the provision that "Congress shall make no law respecting an establishment of religion." This clause is the basis for our doctrine of separation of church and state. Many of the controversies surrounding this clause have involved education; for example, can tax money be used to support religious schools? Can schools allow time for prayer or meditation during the school day? Can prayers be said at graduation?

The second clause related to religion is called the "free exercise clause." It protects the individual's right to believe as he/she wishes (or not to believe). The free exercise clause has been especially important in protecting the rights of religious minorities, whose practices might otherwise be suppressed by the majority. For example, Moslems, Buddhists, members of the Unification Church, Jehovah's Witnesses, the Amish, the Mormons, Bahais, and Seventh Day Adventists have used the First Amendment guarantee to protect their rights. Members of religious groups more numerous in the United States, such as Protestants, Catholics, and Jews, have also used the free exercise clause, as have people who do not hold religious beliefs.

At times, the two clauses related to religious freedom have been in conflict. For example, in 1983 the Supreme Court heard a case involving use of state funds to hire a chaplain to offer a prayer at the opening of state legislative sessions. While some people challenged the use of state funds as a violation of the establishment clause, others argued that the prayer represented an exercise of the legislators' free exercise rights.

Freedom of Speech

Freedom of speech is regarded by many as the cornerstone of a democratic system. It allows the free exchange of ideas necessary to effective decision making and protects the minority from complete domination by the majority. Some symbolic speech—actions taken to convey a message—are also protected. The 1989 Supreme Court decision on burning the American flag is an example of protecting such symbolic speech, as is the famous Tinker case, which involved high school students' wearing black armbands to protest the war in Vietnam.

Freedom of speech is not without limits, however. Speech that incites someone to commit a crime, for example, is not protected by the First Amendment. Some issues that have arisen around the

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[2] Isidore Starr, *The Idea of Liberty: First Amendment Freedoms* (St. Paul, MN: West Publishing, 1978), p. 5.

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freedom of speech include the conflict between free speech and public safety, the extent to which freedom of speech is protected in schools—both for teachers and students—and to what extent obscene or pornographic speech is protected.

Freedom of the Press

Thomas Jefferson emphasized the importance of this freedom when he said "Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I would prefer the latter." Freedom of the press is yet another cornerstone of American democracy. Like freedom of speech, freedom of the press allows divergent viewpoints to be heard. It is designed to protect the public's "watchdog," charged with monitoring government activities and discouraging government from operating in secrecy and from controlling the information citizens receive.

Issues related to freedom of the press are similar to those surrounding freedom of speech—issues related to individual privacy, libel, "fighting words," product advertising, obscenity, and endangering national security. In recent years the conflict between the press's rights and the right of the accused to a fair trial has been confronted in a number of cases. The rights of high school student journalists have also been weakened.

Freedom of Assembly

The right "peaceably to assemble" is bound up with freedom of speech; the right to say what one wishes to an empty auditorium lacks a key ingredient—the audience. The right to hear a speaker is a key ingredient of the First Amendment. Freedom of assembly is also related to freedom of petition. A large group marching down a street with signs espousing their cause may carry a more forceful message than one person's letter to a public official. However, the possibility of conflict arising when groups confront one another has led to some limitations on the right to assembly. For example, cities may require permits for parades or certain kinds of public meetings. This allows the city to take such precautions as providing police protection.

Over the course of U.S. history, the freedom of assembly (along with Amendments V, IX, and XIV), has been used to protect Americans' right to form or join any association or organization they desire. This "right of association" has also been the center of many court cases, including many involving membership in the Communist Party and the NAACP. Cases involving a school district or university that requires teachers to reveal what organizations they belong to have also generated controversy; such requirements have been found to be unconstitutional.

Right to Petition

The right to petition can be traced back to the Magna Carta, signed in 1215. Petitions also played a key role in the efforts of the American colonists to gain a response from the British king and Parliament. Today, the right to petition takes many forms—the traditional written document to which names are signed, lobbying government officials, and conducting various kinds of mass demonstrations. Civil suits in courts are a form of petition. Issues related to the right to petition have primarily arisen when government officials perceived that the exercise of this right threatened public safety.

History of the First Amendment

The First Amendment—indeed the entire Bill of Rights—was not included in the Constitution when it was written in 1787. However, the issue of a listing of rights that could not be infringed upon by the new, stronger national government became a key in the ratification debates. Those supporting the Constitution argued that many state constitutions already protected individual rights and that failure to list the rights did not mean that they did not exist as natural rights, beyond governmental authority. Opponents, called Anti-Federalists, disagreed. Remembering their experience as British colonies, the Anti-Federalists feared that the stronger national government would abuse individual rights.

To win ratification in Virginia (although the required nine states had already ratified the Constitution, ratification by Virginia and New York was considered critical to the success of the new government), James Madison pledged his support for adding a Bill of Rights through the amendment process. He was true to his word, introducing a proposal for a 17-amendment Bill of Rights in 1789, within two months of the opening of the first Congress. The 10-amendment Bill of Rights was passed by Congress, ratified by 11 states, and went into effect in December 1791.

When the Bill of Rights—and indeed the larger Constitution—was adopted, it applied only to white propertied males. Furthermore, it only protected people from actions by the federal government; state governments could—and did—restrict freedom of expression and religion, as well as other rights. While the rights of African-American males were protected in the Fourteenth and Fifteenth Amendments, passed following the Civil War, in practice those rights took many more years to achieve. The rights of women have also expanded slowly with time, as have those of Native Americans.

It was not until 1925 that the Supreme Court began to apply the First Amendment to the states. This was done through a process called incorporation. The First Amendment rights were "incorporated" into the Fourteenth Amendment's guarantee of due process: "nor shall any state deprive any person of...liberty...without due process of law." Equal protection of the law was also provided by the Fourteenth Amendment.

The groups and individuals who have been afforded the protection of the First Amendment have changed over time, as have the definitions and limits the courts have given the various rights. Today, as the First Amendment enters its third century, its history is still being written.

The First Amendment at School

The Supreme Court has consistently held that young people, while at school, do have the protection of the First Amendment. However, the school is regarded as a special setting, in which the public has charged school officials with maintaining a safe environment conducive to learning. Several recent cases have signalled the Court's willingness to allow school administrators to limit students' rights in order to preserve such an environment.

One case, *New Jersey v. T.L.O.*, dealt with Fourth Amendment rights. In that case, the Court ruled that "strict adherence to the requirement that searches be based on probable cause" is "unsuited to the school environment." The Court instead proposed a test of "reasonableness," which has been applied in subsequent First Amendment cases as well.

A second case, *Bethel School District No. 403 v. Fraser*, involved a student who made a nominating speech filled with sexual references. The student was disciplined. In this case, the Court held that sexual language could be defined as disruptive behavior in school, although it might be protected in other settings. The Court said school officials do have a responsibility to teach students "the boundaries of socially appropriate behavior."

A third relevant case is *Hazelwood School District v. Kuhlmeier*. In this case, the Court said that administrators may exercise "editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

In a 1990 case, *Board of Education of Westside Community Schools v. Mergens*, the Court ruled that if high schools allow clubs not related to the curriculum, they could not discriminate against clubs with a religious orientation. The Court's ruling said "There is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."

Introduction to the Middle School Materials

This unit for middle school teachers is intended to help them develop students' awareness of the rights identified in the First Amendment of the U.S. Constitution. Nine major objectives form the framework for developing students' awareness of the First Amendment. Each objective serves as the basis for one lesson. The objectives are:

- Students will understand the importance of First Amendment rights, to the individual and to the society (Lesson 1).
- Students will be able to identify examples of freedom of speech, the press, assembly, and petition and will describe how these rights help protect minority views (Lesson 2).
- Students will describe consequences of using First Amendment rights and will be able to discuss some possible limits to First Amendment rights (Lesson 3).
- Students will recognize reasons for limits on free expression in schools and will describe and evaluate the standards used to apply those limits (Lesson 4)
- Students will be able to differentiate between the two aspects of freedom of religion—the free expression and establishment clauses—and will recognize conflicts between the two in the school setting (Lesson 5).
- Students will be able to describe how an unenumerated right such as privacy is based on the First and other Amendments (Lesson 6).
- Students will identify conflicts between freedom of the press and the right to privacy and will take a position on cases exemplifying that conflict (Lesson 7).
- Students will formulate a position on whether the amending process should be used to change the First Amendment when members of the public disagree with the Supreme Court's interpretation (Lesson 8).
- Students will understand that the First Amendment is constantly evolving and that it influences and is influenced by changes in other parts of the Constitution and the broader society (Lesson 9).

A final lesson provides an opportunity to evaluate student learning through analysis of posters related to the First Amendment. **Note that it is not necessary for a teacher to use all the lessons in order for students to benefit.**

Early adolescence is a time when students are consumed with their personal development and establishing relationships with peers. It is also a time for testing limits and exercising new freedoms. For these reasons, the middle school materials link the experiences of youth to the First Amendment in an attempt to help students understand their rights and encourage them to exercise and protect those rights.

Restrictions on the rights of youth reflect societal concern about the safety of youth, as well as the need to meet agreed-upon educational goals within the special setting of the school. The materials aim to help students develop an active understanding of the proper balance between individual rights and societal needs, using rights at school as a special focus but also expanding beyond that setting to the larger society.

The primary focus in the lessons is a right that interests early adolescents—freedom of expression and, more specifically, freedom of speech. The lessons do, however, also cover freedom of religion, as well as the other aspects of freedom of expression—assembly, petition, and press. Teachers may choose to give additional emphasis to these rights if appropriate for their particular classes. Furthermore, drawing upon the media to help develop student understanding of the changing nature of the First Amendment will reinforce the importance of freedom of the press as a foundation of all our freedoms in a democratic society. Another focus is privacy, a right that is very important to adolescents. While the right to privacy is based, in part, on the First Amendment, it also conflicts with First Amendment rights at times.

All the lessons use a participatory approach that encourages students to discuss, role play, conduct surveys, create projects, and in other ways become engaged in their learning. Although questions for discussion are suggested, teachers are encouraged to develop their own questions to better key the discussion to their students' abilities and interests. Teachers should also feel free to modify or adapt the lessons in whatever way seems appropriate for their communities.

While it is assumed that the primary users of these materials will be social studies teachers, the lessons do provide opportunities for involving language arts, science, and art teachers, as well as the media specialist. To facilitate planning for such cooperative use of the materials, the matrix on the next page lists curriculum links for each lesson. The matrix also provides a general overview of the lessons, including the time and materials required to use them.

Matrix of Activities

Lesson	Focus	Related Outcome*	Materials Needed	Time Required	Curriculum Links
1. Throwing Our Rights Away	First Amendment rights and their importance	1, 2, 3	Contract form on transparency or chalkboard, paper bull's-eye, tape, Handout 1	1 class period	Language Arts
2. Using the First Amendment	First Amendment rights	1, 2	Handouts 2-4, biographies (optional)	1-2 class periods	Language Arts, Drama
3. Free Expression: What Should Be Protected?	Limits on rights	1, 2	Handouts 5-6	1-2 class periods	
4. Expression at School	Rights at school	1, 2	Handouts 7-8; Handout 9 and role cards (optional)	3-5 class periods	Language Arts
5. Religion at School	Freedom of religion	1, 2	Posting paper and markers, school district policy on clubs	2 class periods	Math
6. Privacy and the First Amendment	Unenumerated rights, privacy	2	Handout 10, old magazines, poster paper, markers, scissors, glue	1 1/2 class periods	Language Arts
7. Your Right to Know: The Privacy Triangle	Freedom of the press, privacy	2	Handout 11, role cards, newspapers, scissors, posterboard, tape	2 class periods	Language Arts

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*1. Students will understand the history and meaning of the First Amendment and its importance in today's society.

2. Students will understand that the First Amendment belongs to each individual, not to any one segment of society or institution.

3. Students will understand the importance of protecting their First Amendment freedoms through exercising their rights and responsibilities as citizens in our democracy.

Lesson	Focus	Related Outcome*	Materials Needed	Time Required	Curriculum Links
8. Should the Bill of Rights Be Amended?	History, amending process	1, 2, 3	Copies of the Constitution	2 class periods	Art
9. First Amendment Rights and Technology	Future of the Bill of Rights	3	Handouts 12-13, materials for making posters	2 class periods	Science
10. Interpreting the First Amendment Through Posters	Evaluation	1, 2, 3	Posters, Handout 14	1 class period	Art

1 Throwing Our Rights Away

Introduction:

The First Amendment to the U.S. Constitution is perhaps our most prized; yet several studies and polls have indicated that many Americans take the First Amendment, as well as the rest of the Bill of Rights, for granted. This lesson introduces students to the content of the First Amendment by asking them to claim their First Amendment protections. The lesson then provides a structure in which students are encouraged to give up their rights by turning a "contract" for their rights into a paper airplane and throwing it at a target. The debriefing of the exercise allows students to explore reasons why people do not protect the rights that are part of their heritage and consider what life would be like without First Amendment freedoms.

Objectives: At the conclusion of this lesson, students will be able to:

- Describe rights protected by the First Amendment.
- Hypothesize about why people may not guard their rights as carefully as they should.
- Express their personal views regarding the importance of the First Amendment.

Time Required: 1 class period

Materials: You will need copies of Handout 1, as well as paper, a paper bull's-eye, and tape. Before the class begins, copy the following contract onto a transparency or the chalkboard:

I, ____________ (name) do hereby claim my First Amendment freedoms. The three that I consider to be most important are:

1.______________________________ 2.______________________________
3.______________________________

Signed:______________________
Date:______________________

Procedure:

1. Distribute Handout 1 and go over it with students. Have students summarize each of the five points in a phrase such as "freedom of religion" or "the right to assemble." Tell students that the rights to freedom of the press, speech, assembly, and petition are often grouped together under the heading "freedom of expression." Ask students to think about whether these rights really matter to them. Do they care about any of these freedoms? All of them? If students raise issues related to limits on their rights in the school setting, tell them they will have a chance to discuss these issues in future lessons.

2. Tell students that you will help them enjoy the rights they want to claim by filling in the contract that you have placed on a transparency or on the chalkboard. Have students copy the contract onto their paper, fill in the three rights to be claimed, and sign the contract.

3. Tell students that you would like to hear about their choices later, but it is time to take a break. Ask the class if they would like to try something a little different. Without telling them the end result of

the activity, take them through the steps of folding a paper airplane. Students should use the papers on which they claimed their First Amendment freedoms. Since students will want to throw their planes, continue to build suspense by promising to lower grades if they do not follow your directions.

4. When the planes are complete, tape the bull's-eye to the chalkboard. Instruct students to aim their planes at the target and wait for your signal to throw. Take safety precautions by having students close their eyes at the moment of flight.

5. Following the target practice, begin picking up the planes and asking students what rights they thought were most important and why. Inform them that they threw these rights away and therefore no longer have them. Create some scenarios about what life would be like for them without the rights. For example, if some students threw away freedom of speech, tell them they will need to have written permission before speaking; to get this permission, they will have to write out in advance what they plan to say and present it to the teacher for approval. Tell students who threw away freedom of assembly that they will have to remain in your room all day. They will need written permission to work with other students or to sit with other students while eating lunch.

6. In debriefing this section of the lesson, ask students why they gave their rights away. Common answers ("You told us to do it" or "It was fun") can be the source of a good discussion about whether something similar could happen in real life. If any students refused to throw the contract away, ask them why they did so. Ask: How did it feel without your rights? What would happen to our country if we did not have the fundamental freedoms guaranteed by the First Amendment?

7. Tell students that the following are some of the benefits of First Amendment freedoms:

- Individual development and human dignity are protected.
- A free exchange of ideas helps new discoveries to be made.
- A free exchange of ideas helps citizens participate knowledgeably in democratic government.
- Freedom of religion helps prevent religious intolerance, which has often led to conflict and violation of individual rights.
- The Founders of our country believed that religion was essential to developing the kind of character citizens in a free society need to remain free. Religious freedom promotes character development while protecting natural rights.

If time permits, you might have groups of students present role plays illustrating how the loss of First Amendment freedoms would affect the factors listed above.

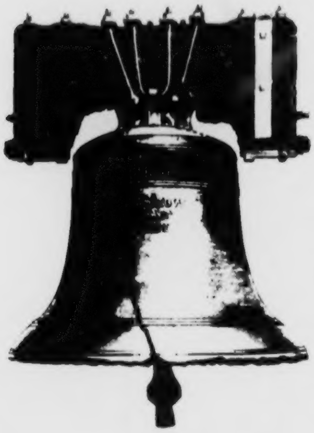
8. Close the lesson by assuring students that their rights remain intact. Tell them they are going to be completing a series of lessons that will help them more fully explore and appreciate their First Amendment rights.

Enrichment/Extension:

1. Have each student write a paragraph about his/her reaction to the paper airplane exercise. Beyond the fun, what did students learn about losing their rights? What situations might lead people to forget about their rights in real life?

2. Have students try this activity on their parents and bring back to class written or oral reactions to the exercise.

The First Amendment



Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

What do the words of the First Amendment mean?

- The First Amendment prevents the government from establishing an official religion. Citizens have freedom to attend a church of their choice—or not attend at all.
- The First Amendment protects our freedom of speech. It keeps the government from making laws that might stop people from saying what they wish. This amendment gives people the right to criticize the government and tell others their opinions.
- A free press means that we can get information from many different sources. The government cannot control what is printed in newspapers and books or broadcast on TV or radio. Citizens can write letters to the editor and request time on television to respond to views that they do not agree with. They can pass out leaflets that give their opinions.
- Citizens can assemble. This means they can join groups as they please for political, religious, social, or recreational purposes. By organizing together, citizens can spread their ideas more effectively.
- The First Amendment also provides for the right to petition. This means that citizens can ask for changes in the government.

2 Using the First Amendment

Introduction:

The First Amendment's protection of freedom of the press, freedom of speech, the right to assemble, and the right to petition is perhaps the most powerful guarantee people have that their views can and will be heard, no matter how unpopular. Indeed, it is through exercise of First Amendment rights that minority views on how our society should be changed have become majority views and/or public policy. Similarly, the First Amendment's protection of freedom of religion is often most important to those holding beliefs that differ from the majority's.

This lesson is designed to help students recognize First Amendment rights in use. The lesson employs several case studies of ordinary citizens who exercised their First Amendment rights to ends that were unpopular with some, but important to them.

Objectives: At the conclusion of this lesson, students will be able to:

- Identify First Amendment rights in use.
- Describe how particular First Amendment rights are important in lives of ordinary citizens.
- Explain why First Amendment rights are often most relevant to people holding unpopular views about how our society should be changed.
- Recognize opportunities to exercise First Amendment rights in their lives and in the community.

Time Required: 2 class periods

Materials and Preparation: You will need enough copies of each case study (Handouts 2-4) for one-fourth of the class. Write the case study questions that follow on the chalkboard prior to the class period in which you will use the lesson:

- What First Amendment right or rights did this person use?
- What did this person do that was unpopular at the time? How did people react?
- How did this person change as a result of exercising a First Amendment right?
- Do you think this person's act benefited or harmed our society? Did the person's views come to be shared by the majority of Americans? By a larger number of Americans?

If you plan to use the **Extension/Enrichment** activity, you may want to ask the librarian/media specialist to create a special collection of biographies of people who have used their First Amendment rights to try to improve our society. A number of suggestions are provided at the end of this lesson.

Procedure:

1. Ask students to list the rights protected by the First Amendment. Post these rights on the chalkboard. As a further review, ask students which of these rights fall under the heading "freedom of expression." Label these rights (speech, press, assembly, petition) on the chalkboard.

2. Encourage students to speculate about who needs freedom of expression the most: someone who thinks the country is being run exactly right or someone who thinks major changes are needed in our government. Point out that it has been through the use of First Amendment freedoms that unpopular or minority views on how our society could be improved have eventually become majority views and public policy.

3. Divide the class into three groups, giving each group one of the handouts. Members of each group should read their case study individually and then conduct a small-group discussion of the case study analysis questions you have written on the chalkboard. Circulate around the room while the groups work, providing assistance and information as needed. For your reference, possible answers to the case study questions are provided below.

- Cat Nguyen used her freedom of the press to start an alternative school paper. She included satirical articles about school and school officials; these articles were unpopular with the principal and school board. Cat was discouraged by the results of her effort, because other students would not buy the paper she had won the right to publish. She decided to become a doctor instead of a lawyer as a result.
- César Chávez used freedom of speech, assembly, and petition to advance the rights of migrant farm workers to have fair wages and decent living conditions. Many of the workers were scared to join Chávez's group, and the growers were opposed to the unionization efforts. However, Chavez never gave up, becoming more and more dedicated to his work and involving his family members in it as well. Eventually, many people joined boycotts to support the workers' efforts, a union was formed, and labor laws were changed.
- Thomas Waring used his freedom of religion to beome a conscientious objector in World War II. He also used freedom of speech and assembly in participating in demonstrations against atomic weapons and the Vietnam War. During World War II, his position was extremely unpopular, as people felt that anyone who was patriotic should fight in the war. In the 1950s, people accused those against continued development of atomic weapons of being communists. However, as more and more people participated in peace demonstrations and rallies in later years, Waring found the experience "exhilarating" and "overwhelmingly powerful."

4. When groups have concluded their discussions, ask each to prepare a brief dramatization about their assigned citizen to be presented in the following class period. An alternative format might be to stage a "talk show" in which the "host" and "audience" ask questions of students representing the case study subjects. Remind students that their presentations should address the case study questions you have written on the chalkboard.

5. At the beginning of the next class period, allow a few minutes for the groups to review what they are going to present.

6. Have the groups make their presentations in turn. Following each presentation, ask the class for a reaction to this citizen. Do they agree with this citizen's goal? What rights did this citizen exercise? What might have been the consequences of not exercising this right? How would you have acted in a similar situation?

7. Ask students to think about what would have happened if these citizens lived in a society where everything is decided by majority opinion. How might the outcome have changed? Emphasize that our republican form of government places limits on the power of the majority. The Bill of Rights—particularly the First Amendment—protects people whose views are unpopular.

8. Conclude the activity by asking students to find a newspaper clipping about someone who is currently exercising First Amendment rights.

Enrichment/Extension:

1. Interested students might, with the help of the drama teacher, prepare more polished presentations on the citizens studied in this lesson. The dramatizations could then be videotaped for use in other classes.

2. Encourage students to interview local citizens who have exercised First Amendment rights on behalf of a cause they believe in. If enough interviews are conducted, students could prepare a magazine of oral histories related to the First Amendment. The student magazine can be added to the school library as a student contribution to the collection.

3. Assign students to read biographies of other Americans who used their First Amendment rights to put forth unpopular views that have now become more widely accepted. A few possibilities are:

Ashabranner, Brent, *Always to Remember: The Story of the Vietnam Veterans Memorial* (New York: Dodd, Mead, 1987). Though not strictly a biography, this book does cover the efforts of Jan C. Scruggs to get the memorial built when many others were opposed.

Bentley, Judith, *Harriet Tubman* (New York: Lerner, 1990). Covers her work as an activist for women's suffrage, as well as her better-known role as a conductor on the Underground Railroad.

Darby, Jean, *Martin Luther King, Jr.* (New York: Lerner, 1990).

Globe Black Biographies (New York: Globe Books, 1989). A collection of brief biographies of prominent African-Americans.

Globe Hispanic Biographies (New York: Globe Books, 1989). Includes a collection of brief biographies of prominent Hispanic-Americans.

Hentoff, Nat, *American Heroes: In and Out of School* (New York: Delacorte Press, 1987). A collection of profiles of young people who have exercised their rights.

Jacobs, William Jay, *Great Lives: Human Rights* (New York: Scribner, 1990).

Klots, Steve, *Richard Allen: Religious Leader and Social Activist* (New York: Chelsea House, 1990).

Kosof, Anna, *The Civil Rights Movement and Its Legacy* (New York: Franklin Watts, 1989).

Larsen, Rebecca, *Paul Robeson* (New York: Franklin Watts, 1989).

McKissack, Patricia C., *Jesse Jackson: A Biography* (New York: Scholastic, 1989).

Neimark, Anne E., *A Deaf Child Listens: Thomas Gallaudet, Pioneer in American Education* (New York: Morrow, 1983).

Peavy, Linda, and Ursula Smith, *Dreams into Deeds: Nine Women Who Dared* (New York: Scribner's, 1985). Includes biographies of Jane Addams, Marian Anderson, Rachel Carson, Alice Hamilton, Mother Jones, Juliette Gordon Low, Margaret Mead, Elizabeth Cady Stanton, and Babe Didrikson Zaharias.

Topalian, Elyse, *Margaret Sanger* (New York: Watts, 1984).

Turner, Glennette Tilley, *Take a Walk in Their Shoes* (Malletts Bay, VT: Malletts Bay Books, 1989). Includes brief, easy-to-read biographies of 14 African-Americans.

Cat Nguyen

A year ago this spring Cat Nguyen was 16, an honors student at West Jefferson High School, just across the Mississippi River from New Orleans, and an editor of a soon-to-be mimeographed school paper called *Your Side*. Five years before that she had reached this country from Viet Nam, with no command of English. Having come so far so quickly, she thought the world was at her feet—until principal Eldon Orgeron saw the paper and banned it.

He had not been consulted, Orgeron said; what was more, he seemed to read the paper's tone as seditious [against authority]. Nguyen went to the American Civil Liberties Union. "I had to do it to prove I can fight for my rights and to show other kids they can fight for theirs."

Nguyen is one of those wunderkinds who inspire pride, envy or both. Her mother came from Saigon to New Orleans in 1980 to be near a brother. Cat soon followed. Her mother got a job teaching elementary school and rented a long, skinny house—a shotgun house—hard by [next to] the levee in the little town of Gretna. Cat conquered English, became an honors student and grew to a height of 4 ft. 9 in. She also got an after-school job in a grocery, where she had to stand on a case of beer to reach the cash register.

Last year, as part of a class project on freedom of the press, she and her friend Regina Saenz and a couple of casual contributors put out their 14-page mimeographed paper. They thought they were being ironic, funny, irreverent. They included references to unresponsive counselors, the selling of term papers, sex, drugs, cheating. "Don't try to cheat unless you're really sneaky, have years of experience and sit way in the back of the class," they wrote in a parody of an advice column. To a would-be dropout, they preached, "Just stay home, get a job at some gas station, get married, have a couple of kids, and before you know it, you'll be 70."

"This was not responsible journalism," said Orgeron. "This school does not extol those kinds of things. That's why this paper has to stop." The principal seized the last 30 of the 150 copies Cat had run off. She had sold the rest at 50¢ a pop. The young woman likes to tell her own story:

"I used to be a waitress in a restaurant, and I knew some lawyers, and they told me to call the American Civil Liberties Union. For a week they didn't accept me. They thought I was just some student mad at my principal. When they did accept me, the A.C.L.U. contacted the school and threatened to take it to court. The school board's lawyers settled out of court. I got the right to print more issues, but I couldn't sell it. We had no money. How could I print without selling?

Excerpted from "This Is Against My Rights," *Time* 130, no. 1 (July 6, 1987), pp. 40-42. Copyright 1987 Time Inc. Reprinted by permission.

"I could not sue without parental approval because I'm underage, and my mother works for the school board and she wouldn't sign. If I had my way, I would have taken it all the way. At the end of the school year I decided to publish another issue. Since I couldn't sell it, it came mostly out of my pocket. I just wanted to prove my rights. It made the teachers mad. The principal said he decided not to censor it—with the lawyers and everything he didn't have the right—but he just wanted to sound tough."

What dispirited her about the ordeal, the student says, was the apathy of the student body. "I wanted a paper for the majority, the D students. The minority, the A students, have their own paper, the official paper, the *Jolly Roger*. But when my paper came out, the minority was against me and the majority couldn't have cared less. I wanted to be a lawyer and change the world. But when I saw the minority wasn't with you and the majority didn't care, it looked to me just like politics. I have decided to become a doctor and help people whether they want it or not. I don't want to have anything to do with politics."

Cat Nguyen was graduated from West Jefferson High last month with perfect scores and a four-year Martin Luther King Scholarship to Brandeis University, where she will start the long road toward becoming a physician.

César Chávez

César Chávez was born in Arizona in 1927. His parents were farmers and business owners. But in 1937, the family lost its farm because of a bad business deal. Here is what happened next.

* * * * *

By 1938, the Chávez family had joined some 300,000 migrant workers who followed the crops in California. Migrant workers would travel all over the state, picking whatever was in season for the farm owners. The migrant workers had no permanent homes. They lived in dingy overcrowded quarters, without bathrooms, electricity, or running water. Sometimes, they lived in the pickup trucks in which they traveled. Like the Chávez family, most of them were of Mexican descent....

Chávez worked part-time in the fields while he was in school. After graduation, he began to work full-time. He preferred working in the vineyards because grape pickers generally stayed in the same place for a longer time. He kept noticing that the labor contractors and the landowners *exploited* the workers. He tried reasoning with the farm owners about higher pay and better working conditions. But most of his fellow workers would not support him for fear of losing their jobs. As a solitary voice, Chávez had no power.

In 1944, he joined the United States Navy. At the end of his tour of duty, he returned to California to work in the fields. In 1948, he married a young woman named Helen Fabela, who shared his social concerns. He began teaching the Mexican farm workers to read and write so they could take the test to become American citizens. He hoped that, as citizens, his fellow farm workers would be less afraid to join him in his efforts to improve working conditions.

One day, a man from the local Community Service Organization wanted to recruit Chávez. He wanted him to join the organization to help inform the migrant workers of their rights.... Chávez became a part-time organizer for the group. During the day, he picked apricots on a farm. In the evening, he organized farm workers to register to vote. He was so successful that he registered more than 2,000 workers in just two months. But he was so busy helping the farm workers that he neglected his own work. As a result, he lost his job in the field.

He then went to work full-time for the Community Service Organization. He had to organize meetings to tell the workers of their rights. He worried because he felt he wasn't a good speaker. So at first, he did more listening than speaking. In time, he grew more confident and found that people listened to him and liked his message.

Excerpted from "César Chávez: Leader of Migrant Farm Workers," *Globe Hispanic Biographies* (New York: Globe Books, 1989), pp. 134-139. Copyright 1989 by Globe Book Company. Reprinted by permission.

But, it was still very difficult to persuade the workers to fight for their rights. They were always afraid of losing their jobs.

By 1962, he could no longer stand to see the workers being taken advantage of, watching as they worked long hours for low pay. At the age of thirty-five, he left his own well-paid job to devote all his time to organizing the farm workers into a union. His wife had to become a fruit picker in the fields to feed their children.

Chávez traveled from camp to camp organizing the workers. In each camp, he recruited a few followers.... At the end of six months, 300 members of the National Farm Workers Union, as the group was first called, met in Fresno, California. At that first meeting, they approved their flag, a red background with a black eagle in a white circle in the center. "La Causa" (The Cause) was born!

With a strong leader to represent them, the workers began to demand their rights—fair pay and better working conditions. Without these rights, no one would work in the fields. A major confrontation occurred in 1965. The grape growers didn't listen to the union's demands, and the farmhands wanted a strike. At first, Chávez wanted to avoid a strike, but he was finally convinced that there was no other way. The workers left the fields, and the unharvested grapes began to rot on the vines. The growers hired illegal workers and brought in strikebreakers and *thugs* to beat up the strikers.

The dispute was bitter. Union members—Chávez included—were jailed repeatedly. But public officials, religious leaders, and ordinary citizens from all across the United States flocked to California to march in support of the farm workers. Then, in 1970, some grape growers signed agreements with the union. The union lifted the grape boycott, and its members began to pick grapes again. That same year, Chávez thought that even people who could not travel to California could show their support for his cause. Thus he appealed for a nationwide boycott of lettuce. People from all parts of the United States who sympathized with the cause of the farm workers refused to buy lettuce. Some even picketed in front of supermarkets.

By 1973, the union had changed its name to the United Farm Workers of America. Relations with the grape growers had once again *deteriorated*, so a grape boycott was added to the boycott of lettuce. On several occasions, Chávez fasted to protest the violence that arose between the growers and the pickers. One of his fasts lasted for twenty-five days. Finally, by 1978, some of the workers' conditions were met, and the United Farm Workers lifted the boycotts on lettuce and grapes.

In 1985, after several changes in the California labor laws, the unionized farm workers began to march again for better wages and improved working conditions. Today, the Chávez children...all work for migrants' rights. Chávez himself continues to lead marches, often accompanied by one or more of his grandchildren. In the sixth decade of his life, he is as concerned as ever about dignity, justice, and fairness. He is still ready to sacrifice for what he believes is right.

Thomas Waring

Thomas Waring is a Quaker. Because of his religious beliefs, he does not believe in violence. As a young man in the late 1930s, when it looked like the United States might enter the war, Thomas knew that he would apply for conscientious objector (CO) status; a conscientious objector is someone who refuses military service because of their religious beliefs.

* * * * *

As I applied to various colleges, ominous news was coming out of Europe. Inevitably, I was asked about which Armed Service I would sign up for in the event of war. One interview in New England went like this:

"In the event that this country gets pulled into the war in Europe, what service will you sign up for?" asked the Director of Admissions.

"I will apply for exemption as a CO."

"Why are you a CO?"

"Because I believe in peaceful methods of solving differences between people. My religious life has instilled in me a deep feeling that I cannot kill. I believe human life is sacred."

"What church do you belong to?"

"I am a Quaker."

"Does that affect your application status as a CO?"

"Yes, the draft registration form asks, 'What is the nature of your training and belief...?' I was trained, as a Quaker, to look for and use peaceful methods of solving differences."

* * * * *

When the United States entered World War II, Waring became a CO. He spent the war years serving the country in ways not related to the war: working in a Forest Service camp and a mental hospital. Many people hated COs, as Waring learned when he went into the small California town near where he was working.

* * * * *

Excerpted from *Something for Peace*, by Thomas Waring (Hanover, NH: Waring, 1989). Reprinted with permission of the author.

I stood beside the truck, stretched, and looked around. The three local men on the bench were looking at me and talking with each other. One of them looked straight at me and spat! The tobacco juice landed on my feet. I moved away, feeling their hostile gazes on my back....

"Guess they don't like strangers here," I said to myself, but I knew better. It was COs they didn't like. Finally, able to turn a corner out of sight, I felt less uneasy. I looked for a shoestore and found a store with a sign saying "MEN'S WORK CLOTHES." I pulled the door open and heard a bell and a voice at the same time.

"Get the hell out of here!" Stunned, I stood a moment looking for the speaker. It took a while for my eyes to adjust to the dim light. There was the owner of the store, balking, wearing red suspenders over a dirty undershirt, leaning on the counter. "You heard me. We don't serve the likes of you in here. Now get out before I...."

I did not allow the man to finish; I got the message and acted on it quickly. I wandered out on the town green and sat under the one tree there....

"Well, I wonder if they'll serve me in that diner over there," I muttered out loud, crossing the street. Before I had stepped up to the pavement, the owner of the diner, a big man in a white apron, appeared in the doorway, hands on his hips. "If you think I am going to serve you at my counter, you'd better think again. My advice is to get out of town. NOW!"

* * * * *

After World War II, Thomas continued to take part in anti-war activities.

* * * * *

I had walked for peace from Waltham to Boston in the late 1950s in protest of the atomic weapons then being built. The idea was to walk from the perimeter of the crater of destruction that would be caused by an atomic bomb if it were dropped on Boston. Others on the same day walked from other points on this perimeter. We started out in Waltham with fifteen marchers. People in second floor windows and in cars driving by spat and yelled "Communists!" at us.

By the time we reached Boston Common, 75 people had joined our little group. There were about 1000 people on the Common in all, and the place was full of hecklers.

Other peace walks in those days were similar. Then, in 1968, I was in a much larger walk from Cambridge Common to Boston Common during the Vietnam War. I remembered walking down Massachusetts Avenue among wall-to-wall people, and that was an exhilarating time. Twenty thousand people on Boston Common!

On June 12, 1982, I had an overwhelmingly powerful experience in the March and Rally against nuclear war in New York City. This time, there were *one million* people marching, from every state and a number of foreign countries.

3 Free Expression: What Should Be Protected?*

Introduction:

While U.S. citizens enjoy broad freedom to express their ideas, First Amendment rights are not absolute. This lesson presents students with the rules used by the Supreme Court in defining what speech should be protected. Students then apply the rules to a hypothetical situation.

Objectives: At the conclusion of this lesson, students will be able to:

- Describe types of expression that are protected by the First Amendment.
- Describe some of the limits on expression as defined through Supreme Court decisions.
- Apply "rules" developed by the Supreme Court to a hypothetical situation involving free expression.

Time Required: 1-2 class periods

Materials and Preparation: You will need copies of Handouts 5-6 for all students. Before the class period in which you will use this activity, write the First Amendment (see p. iv) and relevant words from the Fourteenth Amendment ("Nor shall the state deprive any person of...liberty...without due process of law.") on the chalkboard.

Procedure:

1. Review with students why it is important for citizens in a democracy to have free and open discussion of problems and issues. How has the United States benefited from freedom of expression?

2. Draw students' attention to the words of the First Amendment. Point out that the First Amendment starts out with the words "Congress shall." It did not originally apply to state governments. In the 20th century, however, the Supreme Court has used the Fourteenth Amendment to prevent most of the rights in the first eight amendments from being violated by the states.

3. Ask students whether they think the First Amendment guarantees absolute freedom to say anything to anyone at any time. What restrictions do they think should be placed on the right to express ideas in the United States? When would limits on freedom of expression be justified? Discuss the need to balance rights that may conflict.

4. Provide students with Handout 5. Read the hypothetical aloud with the class. Have students individually determine which forms of protest listed should be protected by the First Amendment.

5. Next, present students with Handout 6. Discuss the tests described on the handout. You may need to review the role of the Supreme Court in interpreting the Constitution. Explain that these guidelines are general principles the Court uses in deciding what should be protected. Ask: How do you react to these rules? Will they be helpful in deciding whether to permit a particular protest?

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*Adapted from "To Protect or Not to Protect—That Is the Question," by William R. Marcy, in *Update on Law-Related Education* (Winter 1990), pp. 40-42. Copyright 1990 American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611. Reprinted by permission of the American Bar Association.

6. Have student work in pairs to use the Supreme Court rules and tests to review their decisions on the legality of each form of protest described on Handout 5.

7. Tally the student decisions on the examples. Discuss each of the cases, asking for students' reasons for protecting speech and not protecting speech, focusing particularly on balancing conflicting rights. You may wish to provide information on the following actual court cases that parallel the hypothetical protests on the handout:

1—*Feiner v. New York*, 340 U.S. 229 (1951). Irving Feiner made insulting remarks toward the president and mayor in a street corner speech urging blacks to fight for their rights. The public was forced to walk onto a busy street around a crowd of listeners. When the crowd became hostile, police arrested Feiner. The court declared (6-3) that public safety was of greater significance than Feiner's free speech. Not Protected.

2—*Brandenburg v. Ohio*, 395 U.S. 444 (1969). Brandenburg was leader of the Ohio Ku Klux Klan. He declared that the government was trying to suppress the white race. He suggested that there might be some revenge. He was arrested for violating a state law regulating "criminal syndicalism." Court ruled "state can not forbid speech if it is not likely to incite or produce" imminent lawless action. Protected.

3—*Pruneyard Shopping Center v. Robins*, 1 447 U.S. 74 (1980). Mike Robins and a group of his classmates went to their local shopping mall to peacefully protest a United Nations resolution they believed to be anti-Semitic. They passed out pamphlets and asked shoppers to sign a petition. Security guards at the mall asked them to leave and they did. Court found that Robins's manner of speech was orderly and the activity was conducted in the common public area of the mall. Protected.

4—*Kovacs v. Cooper*, 336 U.S. 77 (1949). Kovacs was publicly protesting a labor dispute through the city streets using a sound truck to broadcast his message. He was arrested for violating a local ordinance prohibiting the use of any sound equipment that resulted in a loud noise. The Court ruled that the city had a legitimate interest in reasonably regulating the time, place, and volume of sound. While the content of his speech was protected, his method was not. Not Protected.

5—*Edwards v. South Carolina*, 372 U.S. 229 (1963). Approximately 200 high school students conducted a peaceful march to the South Carolina State Capitol protesting racial discrimination. They were told by government officials that they could stay as long as the demonstration was peaceful. One half hour into their program of speeches, songs, and chants, police told the demonstrators they had to leave. They did not leave, and the police arrested them. The Court ruled that a state may not "make criminal the peaceful expression of unpopular views." Protected.

6—*Clark v. Community for Creative Non-Violence*, 104 S. Ct. 3065 (1984) A group of protestors concerned with the Reagan administration's treatment of the nation's poor camped and demonstrated in Lafayette Park across from the White House. They were arrested for camping on restricted government property. The court ruled prohibition of camping on designated property was a "reasonable restriction of the time, place, and manner in which First Amendment rights could be exercised." Not Protected.

8. Conclude by asking students to return to the hypothetical. What would be the best advice to give the Teen Drivers Political Action Committee? Which forms of protest would be legal? Which would be the most effective? Might some other methods be suggested for changing the law?

Enrichment/Extension:

Have students begin a clipping file of free expression cases they find articles about in newspapers or newsmagazines. Each clipping should be mounted on a piece of paper. Beneath the clipping, students should indicate which of the Supreme Court's rules or tests apply in this case. Students can continue to add to the file as they proceed through the unit.

Teens Take Action

The legislature in the state of Crossroads has just passed a new law that has young people, particularly those just entering their teens, very upset. The law says: "The minimum age for driving a motorized vehicle shall be 19 years of age." The governor signed the law this week. The new law will go into effect in three months.

The legal age for driving a car in Crossroads has always been 16. Those already possessing a license will be allowed to drive, but youth between 16 and 19 who do not have a license must wait until they are 19. Fourteen- and fifteen-year-olds are particularly unhappy. They must now wait four or five more years to drive a car!

The consequences are severe. How will students who live on farms get to school? What about students who work? What about students who have paid money for driving lessons? Young people are being unfairly punished!

Some students have organized a Teen Drivers Political Action Committee. They are investigating options for protesting this new law. Since the state legislature only allowed citizens of voting age to speak during public hearings, they are faced with taking more serious action.

Which of the following actions do you think would be protected by the First Amendment? Place an X next to each that you think is an acceptable form of expression.

___ 1. Speaking against the state government on a busy street corner near the capitol. A leader of the group is arrested for disturbing the peace when the crowd responds angrily to insulting comments about the governor.

___ 2. Giving a speech at a local park declaring: "We should revolt against the dictatorship of the state government because the legislature will not permit the expression of our opinions at public hearings."

___ 3. Distributing pamphlets at shopping malls criticizing the legislature and governor and asking shoppers to sign a petition to put the driving age issue to a vote of the citizens.

___ 4. Parading through the neighborhoods where legislators live, using loudspeakers to address the citizens.

___ 5. Conducting a march from the high school to city hall.

___ 6. Camping overnight in a "nonviolent sleep-in" in a park by the state capitol to protest the governor and legislature's policies. (A city ordinance prohibits this.)

Tests for Determining First Amendment Rights

1. Clear and Present Danger

Will this act create a dangerous situation? The First Amendment does not protect statements that are uttered to provoke violence or cause panic.

2. Fighting Words

Was something said to deliberately injure someone or incite a fight? Language that provokes a fight can be punished.

3. Libel and Slander

Was the statement false, or put in a context that makes true statements misleading? You do not have a constitutional right to tell lies.

4. Obscenity

This three-part rule has three questions: Would the average person in the local community viewing the work as a whole find it to be obscene? Does the work depict or describe sexual conduct in an offensive way? Does the work lack serious literary, artistic, political, or scientific value? The Supreme Court has also ruled that "higher standards" can be established to protect youth from exposure to obscene material.

5. Balancing Doctrine

How can we balance demands of free speech in a democratic society with the interests of national security? In times of war, there may be reasons to restrict First Amendment rights.

6. Time, Place, and Manner

Did the expression occur at a time or place that is inappropriate or illegal? Did the speaker use methods of communicating the idea that were inappropriate?

4 Expression at School

Introduction:

In 1969, the Supreme Court delivered a landmark decision regarding students' expression rights in public school settings. Examining the Court's reasoning in the Tinker case (and in more recent cases) will help students understand societal debate regarding the balance between students' free expression rights and school officials' interest in maintaining a safe and appropriate learning environment. This lesson asks students to compare contrasting philosophies and apply the test of "reasonableness" developed in more recent Court decisions to hypothetical and actual situations. As an optional concluding activity, students participate in a mock hearing on a First Amendment issue.

Objectives: At the conclusion of this lesson, students will be able to:

- Describe a free expression question that a junior high school student asked the judicial system to resolve.
- Define *symbolic speech.*
- Explain the need to balance students' right to free expression with the school's responsibility to maintain a safe learning environment.
- Apply the standard of "reasonableness" to hypothetical and real questions about expression at school.
- Investigate the philosophies of local school officials regarding expression at school.

Time Required: 3-5 class periods

Materials and Preparation: You will need copies of Handouts 7-8. If you want students to compare their reasoning with the principal's, make arrangements for the principal to visit the class during the second class period. Making the arrangements should include briefing the principal on what the students have covered to date, providing him/her with copies of Handouts 7-8, and explaining that the purpose of the classroom visit is to develop students' reasoning skills and enhance their understanding of factors a principal must consider in making decisions about what is reasonable. Handout 9 and the role cards are needed for the optional mock hearing.

Procedures:

1. Provide students with Handout 7. Read the fact pattern aloud with the class. Explain that this 1969 Supreme Court ruling on students' right to expression is still considered a landmark case. Introduce the concept of symbolic speech—expressing views through actions—and encourage students to give examples of other forms of symbolic speech (burning a flag or draft card, wearing a symbol on your clothing, raising a fist during the playing of the national anthem).

2. Establish a historical context for the discussion by asking what students know about U.S. society during the Vietnam War era. What have students learned about this time in history from their parents? Why do students think that the Court agreed to hear a case involving the suspension of a junior high school student? Discuss the role of protest in the late sixties and early seventies, as well as the divided opinions between generations and among families.

3. Ask students why schools might be considered a special setting for interpreting First Amendment rights. Discuss the responsibility of school authorities to insure the safety of students and create a good environment for learning. Tell the students that a survey of principals in 1969 showed that two-thirds of high schools and half of junior highs reported some type of student protest during that year. Protests included national issues such as the war and racism, as well as concerns about school rules and the types of classes that students wanted to take.

4. Tell students that you want them to compare the opinion written by Justice Fortas with the opinion written by Justice Black. Which philosophy makes more sense? Can they cite examples from their school experience in which students practiced their constitutional rights at school? Do they agree that wearing a black armband to support a controversial viewpoint would not disrupt the educational environment? Is there any evidence that Justice Black was correct when he said that students do not have enough wisdom and experience to practice exercising their rights?

5. As an optional step, ask for volunteers to conduct an abbreviated (10-minute) debate on the issue. Arrange the room so that the two teams of debaters are facing each other, with students who are not debating sitting behind the team they initially agree with. Allow each team approximately three minutes to present the best argument for its position; follow this with two minutes per team for rebuttal of the opposing arguments. When students who are not actively debating hear an argument that sways their opinion, have them change sides. After the debate, they should share the reasons for their change of opinion.

6. Following the debate, explain that the opinion of Justice Fortas was the majority opinion. The Court ruled the school policy was discriminatory because it allowed some types of political messages but not armbands. The Court found that the armband was a symbol that conveyed a political message. The Court said that students' freedom of speech could be limited, but only if exercising their rights would "substantially interfere with the work of the school or impinge upon the rights of other students." The school had to provide evidence of "substantial interference" before the Court would uphold the infringment of student rights. This case became a standard for balancing the rights of students with the need for a good environment for learning.

7. Tell students that since 1985, there have been changes in the Court's position on student rights. Distribute Handout 8, and read the introductory material with students. Ask students how effective they think they would be at "balancing" students' rights with the need to maintain a good environment for learning. How would they go about defining what is "reasonable"? How are schools and the lives of students now different from 1969? Do students have more or less freedom at school? How have dress codes changed? Are students still involved in political issues? Why or why not? Are there more or fewer violent incidents at school? (A teacher or administrator who has been at the school since 1969 could be invited to class to discuss trends in student behavior and activism.) Discuss how changes students identify might influence the Supreme Court's view of appropriate expression, as well as the school administrators' ideas about what is reasonable.

8. Assign students to complete the worksheet as homework. Tell students there are no "right" answers to the questions but they should be able to give reasons supporting their positions. Note that the first two cases summarize the facts of *Bethel School District #403 v. Fraser* and *Hazelwood School District v. Kuhlmeier*. The fourth and sixth cases also involve school-sponsored speech. The third and fifth cases do not involve school-sponsored speech. The third case is likely to fall under *Tinker*, while the fifth, since it also involves a behavioral component, is more complex; in general, school officials have more authority to regulate student behavior. The seventh case does not involve school-sponsored speech either; students should therefore discuss whether the sit-in would substantially interfere with education.

9. At the beginning of the next class period, tally students' responses to the hypothetical situations presented on the worksheet. Allow the remainder of the class period for a discussion among students and the principal, focusing on such questions as:

- How does the principal think most school administrators would respond to each of the hypothetical situations? How is his/her reasoning different from students' reasoning?

- What does the principal think most administrators view as "reasonable limits" to students' right to free speech? What factors contribute to the way in which reasonable is defined? How do the characteristics of the community influence the principal's views on what is reasonable?
- What does it feel like to be in the position of principal, responsible for maintaining a good learning environment and guarding students' safety, as well as their rights?

The purpose of the discussion is not to arrive at "right" answers to the dilemmas but to develop students' reasoning skills and enhance understanding of the decisions principals face.

10. At the end of the class period, distribute Handout 9. You may ask students to read the article and prepare a "brief" presenting their position and the reasons for it. The written work can be used to evaluate student learning. As an alternative, you may ask students to read the article in preparation for a simulated hearing to be held the following day. As they read, they should think about the arguments they would use if they were the lawyers for the two sides in the case.

11. If you plan to conduct the optional hearing, briefly brainstorm with the class possible resolutions to the conflict described on Handout 9. Post these on the chalkboard. Next, divide the class into two groups. One should represent the plaintiff and should include the ACLU lawyer, the aspiring skinhead, and the English teacher who approved the assignment. The second team should be the defendant (or school district), including their attorney, the principal, and the teacher who confiscated the book. Distribute the appropriate role cards to members of each group; you may assign the students who will actively play the roles or may allow the students to select members of their group.

12. Tell the groups they will have 10 minutes to prepare their cases. The plaintiff's team will go first, followed by the defendant. Each presentation should follow this timetable:

- Lawyer's opening statement (2 minutes)
- Testimony from first witness (4 minutes)
- Cross-examination by opposing lawyer (2 minutes)
- Testimony from second witness (4 minutes)
- Cross-examination by opposing lawyer (2 minutes)

After each team has presented its evidence, the lawyers should be allowed 2 minutes each for closing arguments.

In order to adequately prepare, the groups may want to divide up the tasks, with subcommittees preparing the opening statement, the testimony from the witnesses, the questions to ask the witnesses for the opposing side, and so on.

13. Conduct the hearing. If the teacher acts as the judge and strictly enforces the time allotments, the hearing should be completed in one day. The students not taking an active role in the hearing should act as reporters, taking notes on the proceedings.

14. The following day, conduct a class discussion/debriefing of the exercise. Begin by having the reporters describe what they observed. What arguments were well presented? Which were less clear? What information still seemed to be missing to understand the conflict and reach a decision? What First Amendment issues were raised? Then allow the actors in the simulation to describe how the hearing appears from their viewpoint. Do they now understand others' viewpoints better than they did before?

15. Review with students the possible resolutions to the conflict they brainstormed the previous day. Add any others they have thought of as a result of the hearing. Assign each student to write an essay recommending how he/she believes the issue should be resolved and describing the reasoning supporting that resolution. Remind students to be sure that they deal with the First Amendment issues

in their essays. Allow the remainder of the class period for preparing the essays, which can be used for evaluation purposes. Note that the case has not been litigated, so there is no court-sanctioned view of the issue.

Enrichment/Extension:

1. If your school has a student newspaper, students might interview the editor and faculty sponsor regarding the impact of *Hazelwood* on the paper. Have there been instances of censorship since the case was decided? If so, what was the reasoning used to support the school's action? The young adult novel *The Ninth Issue*, by Dallin Malmgren (New York: Dell, 1989) could be read in conjunction with this activity.

2. Interested students could research teachers' rights to expression in school. Are certain forms of expression prohibited because of the teacher's special role in the educational process? Do students agree with Court decisions in this area?

Tinker vs. Des Moines: A Landmark Case

In 1965, 13-year-old Mary Beth Tinker wore a black armband to her junior high school classroom to express her opposition to the Vietnam War. She wanted to let others know that she and her family believed that the United States should not be fighting this war. Some students noticed the armband and commented on it, but there were no disturbances.

Mary Beth broke a school rule when she wore the armband. The principal told Mary Beth that she had to comply with the two-day-old rule forbidding insignia as a form of protest. The school officials made the rule because they feared problems among students who disagreed on the Vietnam conflict. Students were told they would be suspended if they did not follow the rule.

Mary Beth did not want to comply. She believed that the armband was a form of free speech protected by the U.S. Constitution. She did not attend school until the period for wearing armbands expired. She noted that the school did not punish students for political buttons or even Nazi insignia—just armbands.

With the help of her parents, she went to court to ask that the suspension be removed from her record. She asked for $1 in damages.

The Opinion of Justice Fortas

As long as students' expression of their views does not disrupt learning or cause disturbances that would threaten other students' safety, that expression should be allowed. Students do not shed their constitutional rights at the school house gate.

Students should be able to practice using their constitutional rights to free expression at school. If students are not allowed to express unpopular ideas, they may get a false impression of the importance of debate and minority views in a democracy. How can students learn citizenship without practice?

The Opinion of Justice Black

School discipline, like parental discipline, is an important part of training our children to be good citizens. Taxpayers send children to school to *learn*, not teach.

Students have not reached the point of experience which enables them to teach their elders.

Mature behavior cannot be learned in a school that tolerates lewd, indecent, or offensive behavior. How can students make good decisions without first learning information?

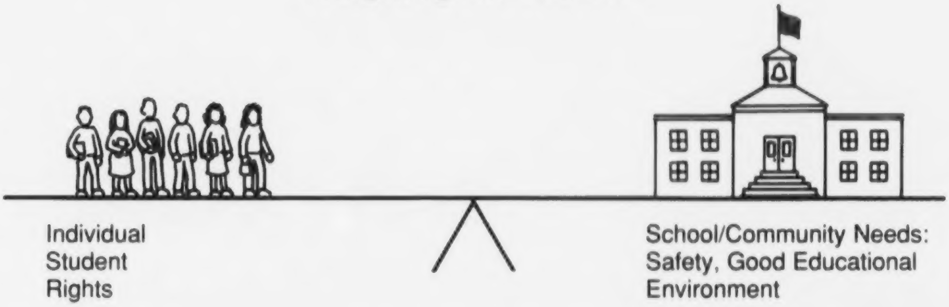
What Is Reasonable?

Since 1965, the Supreme Court has issued two rulings related to students' First Amendment rights. One case, *Bethel School District #403 v. Fraser*, involved freedom of speech. The other, *Hazelwood School District v. Kuhlmeier*, involved freedom of the press. In these two cases, the Court held that school officials can "impose reasonable restrictions" on school-sponsored student speech. Rather than having to provide evidence of "substantial interference," school officials must meet a standard of reasonableness if they choose to restrict school-sponsored expression. Individual expression that simply occurs on schoolgrounds still falls under *Tinker*.

Some questions that might be used in determining what is reasonable are:

- Did the students know in advance the rules regarding certain kinds of speech?
- Is there a good educational reason for limiting student expression?
- Have the rules been applied without discrimination?
- Would the speech interfere with learning or with other students' or teachers' rights (such as the right to privacy)?

Weighing the Issues



Read the cases on the next page. Decide whether each case involves school-sponsored expression. If so, list some issues the principal would need to weigh. Then decide what would be a reasonable response. If the case does not involve school-sponsored speech, decide whether student actions would substantially interfere with the educational process.

1. At an all-school assembly, a student uses sexually explicit and graphic language to describe a candidate running for a student council office. All students were required to attend the assembly or a study hall. The school has a disciplinary code prohibiting obscene language.

2. A high school newspaper features two articles about the personal lives of students. One quotes female students who had become pregnant and successfully dealt with the situation. The second article discusses divorce and includes the name and quote of a male student who said, "My father was an alcoholic and he always came home drunk and my mom really couldn't stand it any longer."

3. A fifth-grade student wears a T-shirt to school that says "Underachiever and proud of it." The PTA has asked the principal to emphasize a positive attitude toward learning for all students.

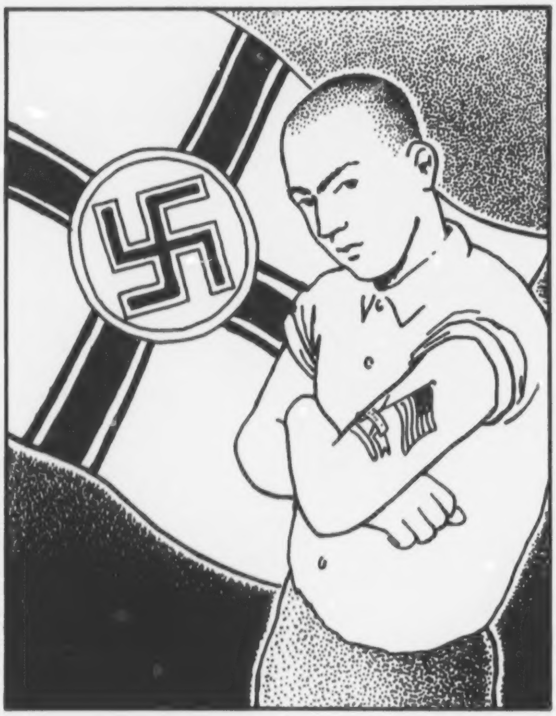
4. An outdoor leadership class orders 500 T-shirts with an anti-AIDS message, as well as promotion for their club. The shirt says "Climbers do it with protection."

5. Students at high schools throughout a large urban area continue to wear expensive designer clothes (leather, goose down coats, expensive gold jewelry) in spite of reports that, during the past year, several students have been shot and robbed for particular items of apparel. Editorials in the newspaper are calling for uniforms or at least dress codes.

6. A high school radio station wants to play music by a rap group whose records have been labeled "obscene" by a local judge.

7. Following an Earth Day assembly about the damage of plastics to the environment, several students organize a sit-in in the school lunchroom to protest the use of plastic products.

The Case of the Aspiring Skinhead



A middle school language arts teacher assigned a book report on a book of the student's choice. One student, a so-called "skinhead-in-training," chose *The Anarchist's Cookbook*. This book reportedly gives instructions for such things as building your own bombs.

Seeing the student reading the book in study hall, another teacher seized the book and turned it over to the principal. The principal lectured the student on his interest in being a skinhead. Skinheads are known for racist, white-supremacist views.

Following the district's disciplinary procedures, the principal also sent a letter to the student's mother. The letter said that other students had complained about the book. It also told the mother that "students are not to wear any form of clothing which would identify them as members of an unauthorized group, or clothing which symbolizes beliefs not supported by our school district." The student's mother was informed that he could have the book back if she came to the school to get it. He could not bring the book into the school again, however. The mother never responded to the letter.

The student contacted the American Civil Liberties Union, a group that often helps people who believe their rights have been violated. The ACLU agreed with the student that his First Amendment rights were violated. It helped him find a lawyer to handle his case. A representative of the ACLU said, "I didn't know the school district had 'approved' lists. The student had been given permission to read the book by an English teacher for a book report. Another teacher confiscated it. We don't even know if he's accused of advocating anything."

The lawyer for the school district said the student's rights were not violated. Regular disciplinary channels were followed, and the boy was given the option of getting his book back if his mother came to the school to pick it up.

ATTORNEY FOR THE ACLU

You are a lawyer hired by the American Civil Liberties Union. You handle cases in which people believe their rights have been violated. In this case, you are concerned that the student's First Amendment rights have been violated. You also think that due process was not used in confiscating his property. You also wonder whether the rules are enforced fairly. You will argue that the unpopularity of skinhead views does not mean that they have less right to the protection of the First Amendment.

THE ASPIRING SKINHEAD

You feel that school officials fear you unfairly. You are the victim of inaccurate prejudices. You feel that you have the right to read whatever you want. That freedom is protected by the First Amendment. In fact, you cannot believe that you are being punished very harshly for reading! Isn't school supposed to encourage reading? You believe that taking the book from you caused more disruption in learning—both yours and your classmates'—than reading the book would have.

THE ENGLISH TEACHER

You strongly believe that all students should have freedom of choice in their reading matter. Freedom of choice is a basic American value. In addition, allowing students to choose what they want to read encourages reading. The fact that the student chose this book is a sign of his interest in learning. Besides, no one can really argue that choosing this book means the student would follow the ideas presented in it. Students who read *Romeo and Juliet* do not necessarily commit suicide because of it.

ATTORNEY FOR THE SCHOOL DISTRICT

You are the attorney for the school district. You are worried about crisis control—the safety of students in the school. You will argue that the book could cause a disruption in learning, as well as possible danger to the students. You know that incidents like this one hurt the school district's image, and you would like to come up with a way of handling these problems without as much fuss and media coverage as this incident created. You may suggest that the district publish a policy about the books that can be read in school.

THE PRINCIPAL

You take your responsibility to run a safe school very seriously. You also take seriously the school's mission—educating students. Of course, you also believe in democratic values, such as freedom. You believe that reading a book like this, which was kept out of the library, could only have disruptive effects. Why would a student be interested in such a book if not because he or she believed in its ideas? You tried to contact the student's parents about this issue, but they do not seem to be interested.

TEACHER WHO CONFISCATED THE BOOK

You were familiar with this book and knew that it glorified violence. Thus, in taking it from the student, you believed you were responding to the administrative guidelines for alternatives to violence. As a teacher, you are charged with acting *in loco parentis*—in the place of the parent. What parent would want their child to be reading a dangerous book like this? This book could only lead to disruption of the educational process. You acted to maintain order so that the educational process could continue. You also followed district rules by alerting your supervisor to what had occurred.

5 Religion at School

Introduction:

*Freedom of religion, like the other First Amendment issues, is extremely complex. At times, the two clauses relating to freedom of religion—the establishment clause and the free exercise clause—have been in conflict. This conflict can be seen in a recent Supreme Court case involving schools—*Board of Education of Westside Community Schools v. Mergens*. In that case, the Court upheld the constitutionality of the federal Equal Access Act, which provided that if schools allowed any clubs not related to the curriculum, they could not prohibit clubs with a religious orientation. Students are introduced to the Westside case in this activity; they then conduct research to determine how local residents feel about this issue.*

Objectives: At the conclusion of this lesson, students will be able to:

- Describe how the establishment and free exercise clauses can be in conflict.
- Explain the Supreme Court's reasoning in a school-related case involving a conflict between the establishment and free exercise clauses.
- Conduct a survey related to an issue of religious freedom.
- Graphically present the survey results.

Time Required: 2 class periods plus time to conduct the interviews.

Materials and Preparation: You will need posting paper and markers. If possible, get a copy of your school district's policy regarding student organizations. After the first class period, you will need to make copies of the student-developed interview form.

Procedure:

1. Review with students the two clauses of the First Amendment that deal with freedom of religion. The establishment clause says that the government cannot support an official state religion. The free exercise clause says that people cannot be prohibited from practicing their chosen religion; the free exercise clause has been interpreted to mean that people are free not to practice any religion.

2. Tell students that the two clauses are sometimes in conflict. The case that you are about to describe involves such a conflict. As they listen to your description of the case, students should identify the conflict between the two clauses. They should also note any possible problems or issues resulting from the decision reached by the Court. Read the following case description to the class:

> In January 1985, several high school students in Omaha wanted to form a Bible club that would meet after school. They were surprised when the principal denied their request. He said that, while he thought a Bible-discussion group was a good idea, it could not be held at school. That would be a violation of the Establishment Clause, which requires separation of church and state activities. A public school is a state activity.
>
> Bridget Mergens, who had come up with the idea for a Bible group, discussed the principal's decision with a lawyer she knew. The lawyer, Douglas Veith, thought the

principal was wrong. The federal Equal Access Act, passed in 1984, had said that as long as schools allowed any groups not related to the curriculum to exist, they could not bar meetings of other student-initiated and -controlled groups on the basis of the "religious, political, philosophical, or other content of the speech at such meetings." Since Bridget's school had clubs that were not related to the school's curriculum—scuba diving and chess clubs, for example—the school could not discriminate against a religious club. By doing so, it would be violating the Free Exercise Clause.

Bridget decided to take her case to court. After five years and two appeals, the case was heard by the Supreme Court in 1990. The Court ruled 8-1 in Bridget's favor, upholding the constitutionality of the Equal Access Act. Four different opinions were written.

Justice O'Connor wrote the following: "There is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect. We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis." However, to ensure that the school does not give the appearance of endorsing religion, school employees, including teachers, can be present only in a "nonparticipating capacity."

Since the school district had claimed that all their other clubs related to the broad goals of the school, O'Connor clarified what qualified as a curriculum-related club: "In our view, a student group directly relates to a school's curriculum if the subject matter of the group is actually taught, or will soon be taught, in a regularly offered course; if the subject matter of the group concerns the body of courses as a whole; if participation in the group is required for a particular course; or if participation in the group results in academic credit." Addressing the concerns of educators who believe the Equal Access Act would allow dangerous groups such as white supremacists to meet in schools, Justice O'Connor said that nothing in the ruling would prohibit schools from banning meetings that would interfere with "the orderly conduct of educational activities."

In a concurring opinion, Justice Marshall, who was joined by Justice Brennan, said that while schools could not discriminate against religious clubs, they should be careful to ensure that students realize the school is not endorsing such clubs. Such care would be especially important, he said, because members of the club could exert peer pressure on others to join by suggesting that the school was in favor of the club.

In the one dissenting opinion, Justice Stevens argued that the Equal Access Act allowed too much federal interference with local schools. He also warned that in order to ban "the Ku Klux Klan and perhaps gay rights advocacy groups from its facilities," a school would have to close its doors to groups "no more controversial than a grilled cheese sandwich." He went on to say that the decision "makes every high school football program a borderline case, for while many schools teach football in physical education classes, they usually teach touch football or flag football, and the varsity team usually plays tackle football."

3. Ask students to identify the conflict in the case, as well as the way in which it was resolved. If a copy of your school district's policy on clubs is available, read it to students and allow them to determine how, if at all, the *Westside* decision will affect your district.

4. Next, ask students to identify what possible issues or problems may arise from the decision. Post students' answers on the chalkboard. They should mention such items as whether dangerous groups would be allowed to meet, whether certain kinds of activities would be curriculum-related, whether the existence of a religious club would result in peer pressure, and so on.

5. Tell students they are going to conduct a survey to determine how members of their community feel about these issues. They will be interviewing students, school officials, and members of the community. Divide the class into several small groups, asking each group to develop two or three questions they would like to ask. Suggest that questions whose answers fall into a limited number of categories (Do you think that religious clubs in schools violate the separation of church and state? Yes, No, or Don't Know) will be easier to analyze than more open-ended questions (What do you think about religious clubs in schools?). Ask each group to write its questions on a piece of posting paper. If students need some examples to get started, you might use the following:

- If a school that has a chess club must allow religious clubs as well, would you favor allowing the religious clubs or disbanding the chess club?
- Do you think allowing religious clubs in school violates the separation of church and state?
- Do you strongly agree, agree, disagree, or strongly disagree that religious clubs in schools would put peer pressure on students to join?

6. Next, have groups trade questions with another group. Each group should now try to improve the questions of the first group by making them easier to understand or clearer.

7. Have all the groups post their questions at the front of the classroom. Conduct a discussion of each question, allowing students to eliminate duplications and refine questions during the discussion. Have students vote, allowing each student to vote for three questions. The top five questions should then appear on the interview form. You may also want to have students prepare a brief description of the *Westside* case that they can read to interviewees.

8. Make copies of the interview form and distribute them to students. Establish a quota of interviewees in various categories. For example, each student might practice conducting an interview by interviewing a classmate and then might be required to interview one student not in this class, one school official (these should be specifically identified and divided among students so a principal or school board member does not receive multiple interview requests), and one adult community member. Go over basic interview etiquette with students; for example, students should explain the purpose of the interview and how long it will take before beginning; if a person declines, they should not put pressure on him/her to participate; they should thank all interviewees at the end of the interview.

9. When students have had time to complete the interviews, set aside a day for tabulation and discussion. A math teacher may be asked to provide advice on how the data should be treated. Encourage students to present the data in a graphic form that could be made available to school administrators and the school board.

Enrichment/Extension:

1. Students might find out what the Lemon Test is. Which justices used the Lemon Test in the Westside case? Which did not? What might be the effects of moving away from use of the Lemon Test?

For the teacher's information, the so-called Lemon Test is derived from the decision in the 1971 case of *Lemon v. Kurtzman*. In that case, the Supreme Court, in an opinion written by Chief Justice Warren Burger, established three criteria for judging whether laws or governmental actions are allowable under the Establishment Clause.

- The law or action must have a legitimate sectarian purpose; the purpose cannot be religious.
- The primary effects of the law or action must not be to advance or inhibit religion.
- The law or action must not result in "excessive governmental entanglement" with religion.

Two of the justices—Kennedy and Scalia—did not use the Lemon test as the basis of their decision in the Westside case. Instead, their concurring opinion indicated that an action could be judged constitutional if it passed one of two tests:

- It does not "give direct benefits to religion in such a degree that it in fact establishes a state religion or religious faith, or tends to do so."
- It does not "coerce any student to particpate in any religious activity."

Clearly, this test is much less rigorous than the Lemon criteria and could have far-reaching effects if adopted by the Court.

2. Students might create a timeline of cases on freedom of religion in the schools. The entry for each case should include its name, a brief description of the facts of the case, and a summary of the Court's finding. Cases covered might include the following:

Cochran v. Louisiana State Board of Education (1930)
Everson v. Board of Education (1947)
McCollum v. Board of Education (1948)
Zorach v. Clauson (1952)
Engel v. Vitale (1962)
Abington School District v. Schempp (1963)
Lemon v. Kurtzman (1971)
Stone v. Graham (1980)
Wallace v. Jaffree (1985)
Board of Education of the Westside Community Schools v. Mergens (1990)

6 Privacy and the First Amendment

Introduction:

The First Amendment provides for privacy by protecting a citizen's right to choose the time, place, and manner for speaking out (or not speaking out); yet First Amendment rights also conflict with this valued but unenumerated right. Since middle school is a time when students are increasingly concerned about their personal privacy, this lesson is designed to help students explore the concept of privacy and consider some of the conflicts that citizens may face in maintaining their privacy in the future. This lesson is most effective when used in conjunction with Lesson 7.

Objectives: At the conclusion of this lesson, students will be able to:

- Identify privacy as a right that is valued but not specified in the Constitution.
- Describe the role of the First Amendment in securing the right to privacy.
- Create a product reflecting personal views on privacy.
- Speculate on how privacy may be affected by changes in society.

Time Required: 1 1/2 class periods plus homework time.

Materials and Preparation: You will need copies of Handout 10 as well as old magazines, poster paper, markers, scissors, and glue.

Procedure:

1. Ask students to think about their right to privacy. Explain that this is not a right specifically mentioned in the Constitution, but the courts have upheld this right. (**Note:** The First Amendment protects our right to express views and religious practice without interference from others; the Fourth Amendment limits police searches; the Fifth protects life, liberty, and property of citizens; and the Ninth has been interpreted as creating a "zone of privacy" in family matters, including such things as the right of married couples to use contraception, the right to marry or not marry, and the right to decide whether or not to have children.)

2. Provide students with Handout 10, and go over the directions with them. This assignment can be completed as homework. Explain that the scrapbook will be turned in, so they should understand that their ideas about privacy will not be completely private! However, since the scrapbooks are designed to elicit student opinions on a very subjective topic, you may wish to indicate that they will be evaluated on the basis of completeness and adherence to instructions rather than on content.

3. Once the notebooks have been completed, conduct a class discussion in which students refer to several assignments in the scrapbooks. Ask them to focus particularly on the importance of privacy in their lives (pages 2, 3, and 4). Once that concept is developed, ask them which pages in their book contain information that may threaten their expectations of privacy. In answering this question, focus on pages 5, 6, and 7. What seem to be the limits on privacy?

(**Note:** The notebook provides a context for discussing both the benefits of privacy—freedom to think and act as one pleases, opportunity to develop as an individual, protection of one's ideas and inventions—and the costs of privacy—preventing the exchange of ideas and limiting the availability of information, preventing authorities from discovering misconduct, threatened security.)

4. Discuss with students why people might be willing to give up some of their right to privacy. What changes or conditions in society make people more willing to accept limits on a right? (An example for discussion is drug testing. Some people are so concerned about the crime engendered by the drug crisis that they are willing to accept limits to rights of privacy and Fourth Amendment rights to allow random drug testing.) What changes make it easier for government, business, and individuals to violate people's privacy? (Information-gathering technologies would be examples that should provoke discussion.)

5. Conclude the lesson by asking students to write a paragraph identifying the conflicts over privacy that exist in the following situation and analyzing the costs and benefits of using the new technology:

> The state patrol has just purchased a new high-speed camera that it wil use in conjunction with radar equipment. The camera will automatically photograph every car that exceeds the speed limit by ten miles an hour. The license plate number will be recorded by the camera. The owner of the car will be notified of the charge and bear responsibility for seeing that the driver of the car appears in court and pays any fines.

In analyzing the case, students should identify that the camera will infringe on people's privacy within their vehicles; however, students may indicate that this privacy is limited anyway, since others can see into most cars. The loss of privacy will represent the cost of using the new camera. The benefit will be better enforcement of traffic laws and therefore greater safety for people on the streets.

Enrichment/Extension:

Conduct a discussion in which students consider the following items:

- Computers store information about private citizens. For example, the IRS keeps records on income, investments, and bank accounts; social security numbers can be used to trace individual's employment, bank accounts, family; credit bureaus provide information about how money is spent, repaid, and saved. Many people voluntarily give information without knowing that it is being stored and made available to others.
- TV stations offer rewards for citizens who use their home video cameras and car phones to report stories.
- Small, high-powered cameras and x-ray techniques can collect photos without the subject knowing.
- Video stores and pizza companies keep track of clients' preferences by storing information about what is ordered with their phone number.
- Cellular phone conversations are considered public because they use radio airways.

Ask students to speculate about how individuals can benefit and be harmed by these technologies in their quest for security. How do these data collection techniques increase or challenge our individual freedoms? Should our society regulate these technologies? How can we insure our freedom in the future?

Have students summarize their views on the issue by drawing editorial cartoons.

Directions for Making a Privacy Scrapbook

Page 1: **Defining Privacy**. Look up the word *privacy* in the dictionary and then develop your own definition. Illustrate it with a picture showing a time in which you value privacy.

Page 2: **The Importance of Privacy to You**. Cut out newspaper and magazine clippings to illustrate people who need privacy. Write a sentence or two telling why privacy is important to you.

Page 3: **Where You Can Find Privacy**. Illustrate this page with a floorplan of your home or a neighborhood map.

Page 4: **Expectation of Privacy**. Divide this page into two sections. In one, glue pictures showing when you expect privacy (telephone, letters, diary). In the other, glue pictures of when you do not expect privacy (parks, sporting events, restaurants).

Page 5: **People Who Have Difficulty Getting Privacy**. Paste pictures of famous people such as movie stars, politicians, and sports heroes. Include quotes about how they feel about privacy. Do they have as much privacy as you? Explain.

Page 6: **Technology that Interferes with People's Privacy**. Illustrate this page with pictures of technologies that the press, government, businesses, and individuals can use to intrude on people's privacy.

Page 7: **Changing Ideas About Privacy**. Interview parents or teachers for ideas about how expectations for privacy have changed in their lifetime. Where and when are people willing to give up some privacy in hopes of gaining security?

Page 8: **Your Ideas about Privacy for the Future**. How much privacy can people expect in the future? more? less? What should our goals be?

Cover: **The Value of Privacy**. Create a cover that expresses how and why you value privacy in your life.

Adapted from *Law in a Changing Society*, upper elementary unit on the Constitution, a project of the state bar of Texas.

7 Your Right to Know: The Privacy Triangle*

Introduction:

Conflicts regarding the public's right to know are increasingly common. Sometimes the conflict is with the government, which often wants to protect information for reasons of national security. Sometimes the conflict centers on individual rights, such as the right to privacy or the right to a fair trial. This activity asks students to think about how the right to know can be maintained and balanced with other important societal and individual needs.

Objectives: At the conclusion of this lesson, students will be able to:

- Describe and analyze some of the conflicts that arise among press, government, and individual needs regarding the public's "right to know."
- Explain the relationship of a free press to a democratic society.
- Categorize news items according to whose interests they represent.
- Present an argument for or against publishing information in specific cases and support that argument from the standpoint of the government, the press, or the individual.

Time Required: 2 class periods

Materials and Preparation: You will need copies of Handout 11, a supply of newspapers that can be clipped, and copies of the role cards. You will also need scissors, posterboard, and tape. If you plan to use a panel of judges in step 5, you will need to arrange to have several community resource persons available on the day of the lesson; a journalist or journalism teacher, government official, principal, or other teachers could all serve as judges.

Procedure:

1. Pose some questions to the class regarding freedom of the press issues. For example:
    - How much freedom should television and newspapers have to report on the private lives of individual citizens?
    - Do some people have more right to privacy than others?
    - Could democracy work without a free press?
    - How should the media decide what stories to run?
    - How has the electronic age changed our perceptions of the public's "right to know?"

2. Tell students they are going to read a case that illustrates how journalists make decisions about privacy and information in their daily work. Distribute Handout 11 and allow time for students to read it. Students can answer the questions individually (in writing), in small groups, or as a whole class.

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*The idea of considering privacy vs. access decisions as a triangle was developed by Professor George Trubow, director of the Center for Informatics Law, John Marshall Law School, in an address at a First Amendment Congress seminar on privacy, access, and accountability.

3. Explain to the class that they will be investigating these questions through a simulation in which they play the roles of the people, the press, and the government. To prepare students for their roles, divide the class into three groups and have each review the information provided on the role card for its assigned group. Each group should select a spokesperson and make a large sign to identify the group.

4. Ask groups what their position or interest would have been in the case of the photographer and Vietnam veteran. It is likely that the government group will say they do not have an interest in this case. Ask them to consider what the government's interest would have been if, instead of a veteran, Bill Welch had met a weeping public official in the park. The official regretted his or her role in not providing the public with accurate information during the Vietnam War.

5. Pass out a section or entire newspaper to each group, asking students to complete the clipping assignment as described on the role cards. Have students illustrate their group's perspective by compiling their clippings on posterboard. Have each group circle the pictures, editorials, or newstories that identify their interests most effectively. Allow time for the groups to report on their clippings.

6. Arrange the room in a triangle, with a group at each point. Pose the following conflicts to the class, asking each group to develop a response to each dilemma.

- A school bus driver has been convicted of drunk driving.
- The governor is seen dining at midnight with a person other than his/her spouse.
- A 16-year-old boy is accused of raping a 14-year-old girl.
- A reporter gains access to videotapes made by prison wardens; the tapes show a prisoner in a phone conversation with his lawyer.
- A national news agency wants access to a government (FBI) document to use in developing an expose on a rock star.
- The government refuses to give information about a riot on a military base to a television station on the grounds that publicity might harm national security.
- A historian requests CIA and FBI files to write a book that contradicts the official version of President Kennedy's assassination.
- Both sides in a murder case ask the judge to issue a "gag" order prohibiting the press from writing about a case.

7. Provide time for the groups to develop appropriate responses to the dilemmas. Then have groups present their positions for debate or for decision by the panel of judges you have assembled. Following the presentations, you might also allow students to abandon their roles and vote as they personally feel on each dilemma.

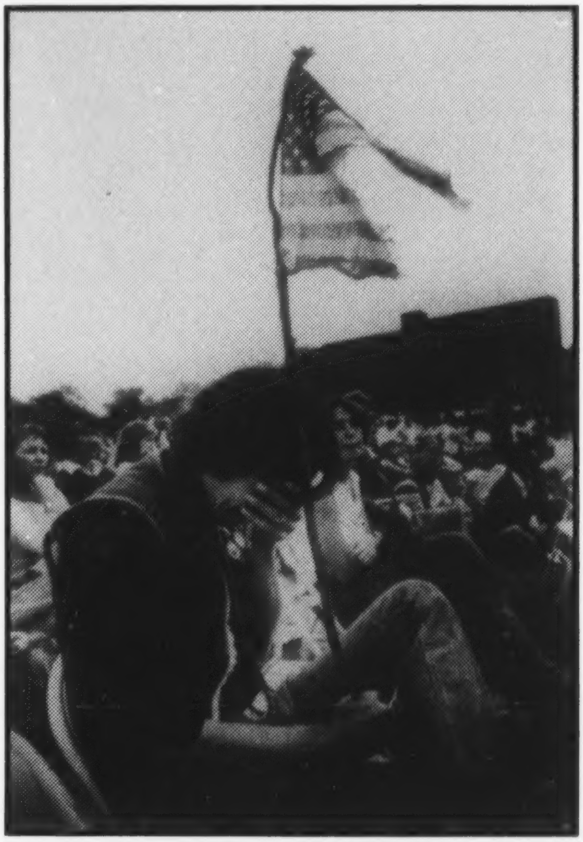
8. To conclude the lesson, return to the key questions posed in step 1 of the lesson. To evaluate the lesson, have students write letters to the editor expressing their opinions on the issue.

Enrichment/Extension:

1. Invite a journalist to class to talk about how he/she makes decisions regarding what to write or not write. The visitor could also address how the editors and publishers of the newspaper influence what is written and what appears in the newspaper. Students might ask the journalist to comment on the list of situations in Step 6 above, or they might create situations of their own on which the journalist could comment.

2. Interested students might read *Who's to Know? Information, the Media, and Public Awareness*, by Ann E. Weiss (Boston: Houghton Mifflin, 1990).

A Photographer Deals With the Issue of Privacy



Through the viewfinder of my camera I could see people looking sympathetically at the Vietnam veteran, tears in his eyes, the tattered American flag in his hand.

His very private moment was on public view—and I was photographing that moment for thousands of newspaper readers. I was showing his sadness, his inner pain, his solitary reminiscence of his experience in Vietnam.

I had come to Centennial Park that day to observe and to photograph a community salute to the near-forgotten veterans of a controversial war.

By chance I had come across this former soldier who was consumed by the hurtful impact of remembering lost friends and shattered dreams.

I have no idea how other photojournalists feel at such moments, but I suspect that no matter how experienced, somewhere within them there is something of what I felt; a sense of intruding on an intimate time.

Suddenly, I sensed the mood of the people nearby. I was "news media," exploiting tragedy, exposing the raw nerve of sadness. I could see people glaring at me as if I were committing some obscene act.

The point of the assignment, ideally, was to give thousands of newspaper subscribers, through their viewing of photographs, a means of understanding and even sharing what this event was all about.

As some participants in the ceremony were retiring the colors, I approached Scott Summer to ask his name, address, and something about his service in Vietnam.

Photo and story by Bill Welch. Used by permission of *The Tennessean*.

Scott was friendly. The ragged flag had belonged to his best friend, Kenny Brown, he said. They had come from Fort Scott, Kansas, and joined the army together. Kenny was a door gunner on a helicopter; Scott was a medic.

Kenny had been killed on Scott's birthday. On this day, Kenny was on Scott's mind. Scott was remembering times when the two of them would get together in Vietnam. Scott loved chocolates; Kenny loved beer. They would meet and swap beer and chocolates—and enjoy talking about home.

Somehow, Scott said, he did not feel that he was "home" from Vietnam yet. It was, this day, almost as if he were still in Vietnam. Tears welled up in his eyes. He started to cry. Again, I began to photograph him.

He put his head in his hand. The drama of the moment seemed peaked. I stopped photographing.

I said goodbye. I had the picture that to me symbolized the day.

The next day the picture ran on the front page—and the response was immediate. The AP selected it and sent it out to newspapers in other cities. It made the front page in Boston and a reporter called to ask how I had come to take it. Locally, people began to telephone me.

Then Scott Summer called. His voice was warm. He said he appreciated the picture. It had helped him to see himself weeping publicly. His attitude made me choke up. I started crying on the phone. Scott said the torn flag expressed the way he and many other veterans felt—"torn up and dilapidated inside."

* * * * *

Questions to Think About:

1. What rights are in conflict in this story?
2. If you were the photojournalist, which would you place more emphasis on—getting the story to the people or the feelings of the person you were photographing?

THE PRESS

You fill the role of watch dog. You have the right to investigate government and issues that are of interest to the public. You create a marketplace where ideas are exchanged.

To do your work, you must have the right to gather information from whatever sources are available. Through the Freedom of Information Act, you have the right to gather information from a variety of government sources.

Clipping Assignment:

Clip all articles, pictures, and editorials that illustrate your right to criticize the government, government policy, or the acts of public officials.

Role Play Perspective:

How would publishing this information benefit society?

THE GOVERNMENT

You have been hired or elected to serve the people. You are responsible for protecting national security, as well as preserving individual rights. You have collected and classified millions of documents—418 stacks of files as high as the Washington Monument. You and other government officials are concerned about how this information could be used to harm the United States. The citizens you serve are increasingly fearful that the government will give unknown groups or individuals personal information that could be used in harmful ways.

Clipping Assignment:

Clip articles, pictures, and editorials that illustrate your concern with protecting the rights of individuals and guarding the national security.

Role Play Perspective:

How would publishing this information damage an individual? threaten the safety of the nation?

THE PEOPLE

What information do you need to be a responsible citizen? If a criminal is operating in your neighborhood, you need to know about it so you can take precautions. If the government is acting irresponsibly, you need to know so you can vote leaders out of office. If the government is thinking of taking actions that will eliminate your job or threaten the environment, you have a right to know what is going on.

At the same time, you worry about all the information that the government and other agencies, including the press, are collecting about you. You are receiving calls from people you don't even know, even though you have an unlisted telephone number. After you opened a new bank account, several mailings from credit card companies arrived at your home. Such intrusions make you fearful.

Clipping Assignment:

Clip articles, pictures, and editorials that represent information you want and need as a citizen in a democracy. Also clip items that seem like unnecessary intrusions into private lives of people.

Role Play Perspective:

How would having access to this information help you fulfill your role as a citizen? How would you feel about having such information published about yourself?

8 Should the Bill of Rights be Amended?

Introduction:

U.S. constitutional history can be viewed as the story of expanding rights. Five amendments to the Constitution have had the express purpose of expanding voting rights to bring more people into the political process. Several other amendments, in addition to those in the Bill of Rights, have provided more constitutional liberties for citizens. In addition, Supreme Court decisions have, over time, tended to expand freedoms. As students learned in an earlier lesson, the Court has used the Fourteenth Amendment to extend First Amendment protections (and other freedoms provided for in the Bill of Rights) to the states.

This lesson reviews some of the ways that the definition of rights has been expanded. Students then debate the advisability of limiting the First Amendment by adding a new amendment prohibiting flag burning. The lesson employs a "human continuum" to stimulate thinking about the issue.

Objectives: At the conclusion of this lesson, students will be able to:

- Explain how rights have been expanded throughout U.S. history.
- Analyze arguments in support of and against prohibiting flag burning.
- Formulate a position on whether the First Amendment should be amended.

Time Required: 2 class periods

Materials and Preparation: You will need a copy of the Constitution for every two students. Most U.S. history and civics textbooks include the Constitution as an appendix or special reading. Before class begins, draw the following continuum on the chalkboard or on chart paper on the wall:

Strongly Support ______________________________ Strongly Oppose

Limiting First Amendment
Rights Through a Constitutional
Amendment on Flag Burning

Procedure:

1. Ask students to use what they have learned in this unit to identify the two most important ways in which the Constitution changes. They should be able to identify the amending process and court decisions.

2. If students are not familiar with the amending process, have them work in pairs to identify where in the Constitution the amending process is described (Article V), the two ways of initiating an amend-

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The letters used in this activity were reprinted with permission of the *Des Moines Register*, they appeared in the *Des Moines Sunday Register* (June 24, 1990).

ment (by two-thirds votes of both Houses of Congress or by a convention requested by the legislatures of two-thirds of the states), and the two ways an amendment can be approved (by the legislatures of three-fourths of the states or by conventions in three-fourths of the states).

3. Tell students they are going to conduct a scavenger hunt through the amendments to the Constitution. They are to find the following amendments:

- 5 amendments that expanded voting rights or removed barriers to voting (Amendments XV, XIX, XXIII, XXIV, and XXVI)
- An amendment that dealt with equal protection and due process rights (Amendment XIV)
- An amendment that allowed citizens to vote for certain public officials who had been chosen by state legislatures before (Amendment XVII)
- An amendment that limited people's rights and the amendment that restored the same right (Amendments XVIII and XXI)

Would students describe the process of constitutional change through amendment one of expanding or limiting rights? (You may wish to spend some additional time focusing on the amendments related to voting in order to develop student understanding of the importance of expanding voting rights in a democracy.)

4. Tell students that, in general, Supreme Court decisions have, over time, also expanded the rights of citizens through changing interpretations of the Constitution. Review with students the 1989 Supreme Court ruling on flag burning (*Texas v. Johnson*). In that decision, the Court held by a 5-4 majority that burning the flag was a form of protected symbolic speech. Many Americans were outraged by the decision, and Congress quickly passed a law making it illegal to burn the flag. In 1990, again by a 5-4 vote, the Court ruled that law to be unconstitutional. Opponents are now considering a constitutional amendment to prohibit burning the flag. This would be the first amendment that would limit any of the liberties guaranteed in the Bill of Rights.

5. Draw students' attention to the continuum you have drawn on the chalkboard. Demonstrate how students can show the strength of their opinions on whether we should enact a constitutional amendment prohibiting flag burning by standing along the continuum. Position yourself at several different points on the continuum, giving a possible explanation for each—"I'm opposed to flag burning but I'm not sure its worth amending the First Amendment so I'm standing in the middle" or "I support a constitutional amendment not only to prohibit flag burning but to prohibit derisive renditions of the national anthem" or "I oppose any limits on First Amendment rights."

6. Ask several students to take positions along the continuum to represent their views. Try to ensure that the volunteers have varying views. Allow each student to give a brief statement of his/her opinion. Students remaining in their seats can indicate whether they think those along the continuum are standing in the correct places.

7. Tell students that you are going to read several letters to the editor of the *Des Moines Register*. (You may wish to point out that the freedom to write the letters represents a First Amendment right.) Students should listen to the letters and decide whether the positions set forth affect their own views. Read the first two letters.

> While it is true that the principle behind the First Amendment is that the government may not prohibit the expression of an idea simply because society finds the idea offensive, not all offensive ideas are created equal. Society does set limits.
>
> Flag burning is touted as a perfectly acceptable form of expression while cross burning is a criminal offense. Cross burning is a crime of hate. Burning our country's flag is a also a hate crime, only of a much grander scale....It shows a contempt of not only races, genders and creeds, but the system of both legal and social compacts we as a people have freely established to provide beneficial structure for our lives.—**B.S.**

> I have read with disgust the news stories about the terrible destruction being allowed to take place to our nation's flag. Our flag must be protected. When the Constitution was written, no one ever thought there would be a need to protect our flag, a symbol highly revered and respected, from the pranks and misrepresentations one finds today. You can be sure they would have written a clause severely punishing any offending person if they had even dreamed it would be necessary. One can't enjoy freedom and then desecrate the symbol of the U.S.A. by which that freedom is so generously given.—**K.G.**

8. Allow the students standing along the continuum to move if their opinions have changed at all as a result of listening to the letters. Any students who move should provide an explanation for their change in opinion.

9. Allow the first group of volunteers to return to their seats and ask a second group to take positions along the continuum. Again, each student should be allowed to provide a brief explanation of his/her position. Then read the next three letters:

> Freedom of speech and protest are rights guaranteed to all Americans. Protest is by its nature an offensive act. To suggest (as one reader has) that it's OK to protest as long as you don't offend anyone is ridiculous. Imagine, if the men who founded our country had felt this way we would still be colonies. I'm sure the king of England was offended by the Boston Tea Party and other acts of the early patriots.
>
> Americans should remember the great words attributed to Voltaire: "I may disapprove of what you say, but I will defend to the death your right to say it." That's what the First Amendment is all about.—**C.J.M.**
>
> Many citizens fly the American flag proudly each day as a symbol of their pride in this great nation. At the other extreme are a small group of individuals who may choose to burn the flag to demonstrate their dismay and frustration with a government that does not live up to the ideas for which the flag stands. These are divergent ways of displaying one's love of country, but isn't that what a democracy is all about: freedom of speech and the press, the right to disagree,...the freedom to protest—perhaps even the right to burn the flag?—**A.B.**
>
> The destruction of the U.S. flag...should be condemned. There is a time, however, when the condemning of flag burners can go too far. The Congress, by changing the Constitution, will do more damage to what the flag stands for than flag burners could ever do. In order to protect Old Glory we must not alter the document that gives it meaning.—**S.B.**

10. Again allow students standing along the continuum to move if their opinions have change.

11. Next, have the students standing along the continuum present the reasons for their final positions. Ask students who remain seated to indicate agreement with the reasons by raising their hands. When the reasons have been presented, ask seated students who agreed with a particular position which argument of the "opposition" was most convincing and might cause them to change their minds.

12. Allow the students along the continuum to be seated. Discuss the possible consequences of various choices. Would amending the Constitution lead to erosion of other rights? Would not amending the Constitution lead to more disrespect for the symbols of our nation and eventual decline in support for our government? You might point out that Justice Brennan, perhaps the staunchest opponent of limits on the First Amendment, retired in 1990. Could a future case result in a different decision?

13. To evaluate student learning, have students draw political cartoons or create posters showing their viewpoints on this issue.

Enrichment/Extension:

In July 1990, Justice Marshall, for the second time in recent years, violated Supreme Court tradition by criticizing the president. Justice Marshall's interviews provide one of the few instances in which Americans have the opportunity to see a Supreme Court justice as a real human being. Too often, Americans have difficulty viewing the deliberations of the Supreme Court as a human activity, subject to the human qualities of the justices.

For students particularly, it can be enlightening to know that Justice Marshall, for example, was the lawyer who argued the famous Brown case, is known for his sense of humor, has a wife who has promised to tell him if he shows signs of senility, and other personal facts. Similarly, knowing that Antonin Scalia is intense and often abrasive, drives too fast, has nine children, and votes conservatively except on free speech issues may help students recognize why the Supreme Court is such a complex institution.

To develop student understanding of the justices as people, divide the class into nine groups, assigning one justice to each group. Challenge each group to develop a profile of their justice that will include information about the following: (1) the justice's family, (2) personal traits the justice is known for, and (3) the work done before becoming a member of the Supreme Court. Each group should also try to find a quotation from their justice on the First Amendment. The research could be used as the starting point for a class-developed bulletin board on "The Supreme Court and the First Amendment."

9 First Amendment Rights and Technology

Introduction:

This lesson uses an indirect, interdisciplinary way to demonstrate the importance of First Amendment rights in dealing with societal changes. The specific focus of the lesson is technology, which is exploding, changing our lives and the way that we think about our constitutional rights. Technological breakthroughs have the potential to interfere with our privacy, improve our health, blight our environment, and provide us with immediate access to information. This lesson asks students to explore new technologies that have raised legal and ethical issues and to develop a plan for using First Amendment rights to advocate a position on one such issue.

Objectives: At the conclusion of this lesson, students will be able to:

- Analyze a current policy question created by a scientific breakthrough.
- Describe the role of the First Amendment in protecting and securing other rights.
- Develop a strategy for using First Amendment rights to advocate a position on a current technological issue.

Time Required: 2 class periods plus research time (research may be done in science class)

Materials and Preparation: You will need copies of Handouts 12-13, as well as materials for making posters.

Procedure:

1. To provide students with a historical perspective on the United States as a nation that values new ideas and technologies, read aloud this excerpt from *Genius of the People*, by Charles L. Mee, Jr. (New York: Harper and Row, 1988); the excerpt describes the library of Ben Franklin:

> To enter the house itself was to step into a world propelled by a delight in the new, the odd, the curious, the bizarre, the funny, the wonderful....The new library was on the second floor, just above the new dining room...In the center of the room was a special writing table, large enough for Franklin to place his large folios of natural history prints on and open them up for his friends to view. He loved to show off, too, a "glass machine" which exhibited the circulation of blood in the arteries and veins of the human body...Another of the marvels in Franklin's study was a long artificial arm and hand that he could use to reach books that were high up on the shelves. The chair in which Franklin usually sat was also of his invention; it was a great armchair, with a rocker, and a large fan above, with which he fanned himself, using only the smallest motion of his foot.

Ask students to speculate on how Franklin's home was different from that of other people of that time.

2. Ask students what inventions they might want to show Franklin if he were to come for a visit. What would he think about some of the technologies? For example, what might he think of a camera that could look inside luggage for weapons? What would he think of government agencies and private

companies storing information about citizens in computerized data bases? Would be find such practices to be in conflict with the ideas of the Framers?

3. Provide students with Handout 12. Discuss some of the new technologies listed and ask students to add to the list. Explain that you want each of them to explore a particular technology that has raised legal or ethical issues, keeping in mind the ideas about civil liberties that are expressed in the Bill of Rights. Review the directions for the research and presentation of the information in the form of a poster. Point out to students that the last step in the process is planning a strategy for using First Amendment Rights to advocate a position on the issues researched. Handout 13 can be used as a resource in this planning.

4. Once the posters are completed, have the students analyze the work of the group. What issues seem to be of most concern to the class? Do individuals have different opinions? Do any of the posters cause students to reconsider previously held opinions?

5. Involve students in a plan to "publish" the posters by displaying them in the school. Ask students how the poster display is related to the First Amendment. Why is it important for citizens to have the right to tell others their opinion on such matters? Why is it important that citizens have *informed* opinions? Which of the strategies for using First Amendment rights are likely to be most effective?

Enrichment/Extension:

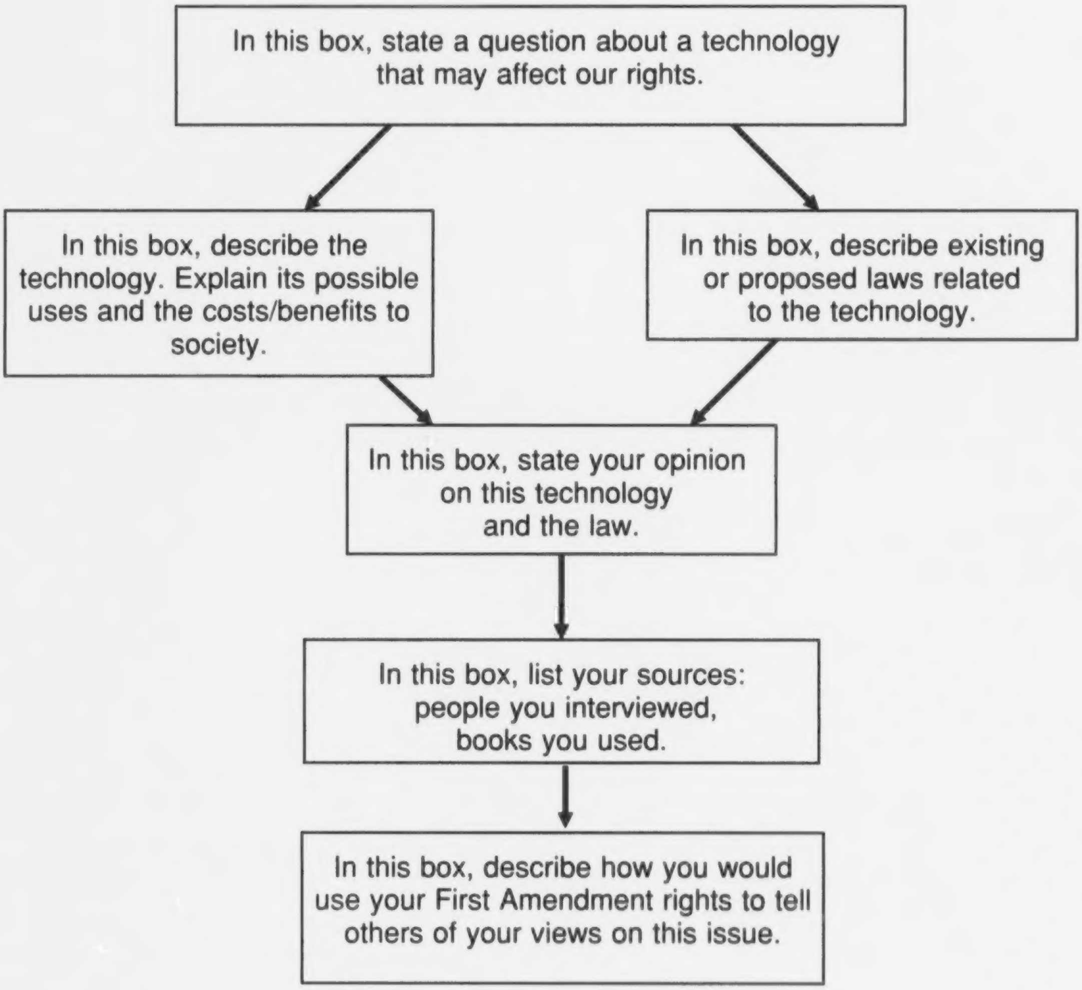
Invite several local activists to participate in a panel discussion about how they use First Amendment rights to advance their positions. What strategies are most effective? least effective? difficult to do because of cost or legal restrictions? Although panel members should be asked to focus on use of First Amendment rights rather than on their positions per se, it would still be a good idea to aim for balance among the panelists. If you can locate community members active with respect to the issues students researched, that would enhance the activity even more.

Handout 12

Analyzing Technology and Legal Rights

Technologies that raise legal questions:

- suicide machine
- surrogate parenting
- drug tests/breathalizer
- use of animals in experiments
- organ transplants
- abortion pill
- DNA/gene testing
- automatic assault weapons



In this box, state a question about a technology that may affect our rights.

In this box, describe the technology. Explain its possible uses and the costs/benefits to society.

In this box, describe existing or proposed laws related to the technology.

In this box, state your opinion on this technology and the law.

In this box, list your sources: people you interviewed, books you used.

In this box, describe how you would use your First Amendment rights to tell others of your views on this issue.

First Amendment Strategy Checklist

Speech

- ☐ Give a speech at a club to which you belong.
- ☐ Talk with friends, family members, and teachers.
- ☐ Stand on a street corner, talking with whomever will listen.

Press

- ☐ Stand on a street corner, passing out handbills.
- ☐ Submit an article to the school newspaper.
- ☐ Write a letter to the editor of the local newspaper.
- ☐ Take out an advertisement in the paper.
- ☐ Ask for public access time to respond to an editorial on TV.
- ☐ Form a new newspaper.
- ☐ Call a press conference.

Assembly

- ☐ Join a club that shares your views.
- ☐ Form a new club of like-minded people.
- ☐ Stage a walkout or sit-in.

Petition

- ☐ Collect signatures of people who agree with you and send them to your representatives.
- ☐ Write letters to public officials.
- ☐ Picket the state capitol.
- ☐ Testify at a city council meeting.

10 The First Amendment in Posters

Introduction:

This lesson is designed as an evaluation tool. While a traditional multiple-choice test could be used to assess the factual knowledge students have gained, the analysis of posters regarding the First Amendment will demonstrate the extent to which students understand not only the rights protected in the First Amendment but also the application of those rights to them as individuals. Although the activity is presented as a written exercise, it could also be conducted as a small-group scored discussion.

Objectives: At the conclusion of this lesson, students will be able to:

- Identify a First Amendment right as presented in a poster.
- Recognize a First Amendment issue focused on in a poster.
- Evaluate how the issue might affect their own lives.
- Analyze and take a position on the issue.

Time Required: 1 class period

Materials and Preparation: You will need copies of the posters and Handout 14. If students do not have a great deal of experience analyzing visuals, you may wish to prepare for the activity by analyzing one of the posters provided with the lesson.

Procedure:

1. Provide each student with a set of posters. Explain that these posters were winners in a national competition for college students.* Allow students to spend a few minutes examining the visuals; each student should select one poster to analyze for this activity.

2. Distribute Handout 14. Go over the questions with students to ensure that they understand what they are to do. Allow the rest of the class period for students to complete their analyses. Collect the handouts to be graded.

As an alternative, each student could be asked to complete analysis sheets on all the posters (this might be done as homework). Each student could then choose one analysis sheet to be turned in to the teacher for evaluation. A discussion of the reasons for the selections might serve as a needs assessment on what concepts need additional work.

3. In scoring the analysis sheets, you should look for the following characteristics:

- Correct identification of the right concerned.
- Correct identification of any issue or conflict that is causing controversy.

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*This competition is sponsored by The International Newspaper Advertising and Marketing Executives Foundation and the Commission on the Bicentennial of the United States Constitution. The posters are used by permission of the sponsors.

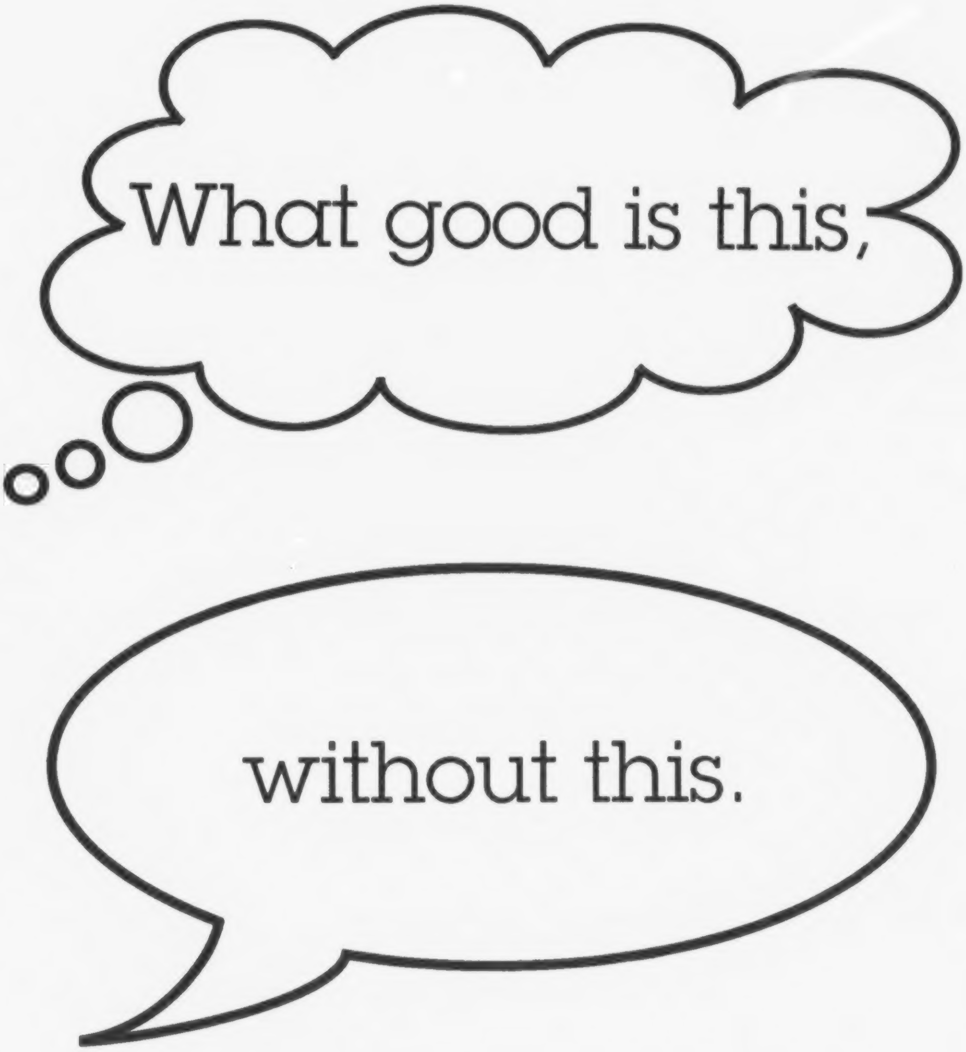
- An indication of how the right or conflict affects the individual.
- Correct identification of the message conveyed by the poster.
- Clear reasons to support the student's position on the issue.

The following notes are provided to assist you in evaluating students' work:

- The first poster (p. 58) deals with freedom of speech. An issue is the need to maintain freedom of speech so that ideas and solutions can be expressed. The designer's message is that intellectual freedom is meaningless without the freedom to express ideas.
- The second poster (p. 59) deals with freedom of speech, assembly, and petition. An issue is the importance of First Amendment freedoms in protecting other rights or advancing unpopular causes. The designer's message is that First Amendment freedoms are important in securing other rights.
- The third poster (p. 60) includes the First Amendment rights of religion, press, and expression (music), as well as the unenumerated right to privacy. An issue on which the poster focuses is the importance of the Bill of Rights in securing the American tradition of freedom. The designer's message is that citizens must understand their rights in order to protect them.
- The fourth poster (p. 61) deals with freedom of religion, in that the student described on the poster refused to participate in the Pledge of Allegiance for religious reasons. An issue is whether freedom of religion is more important than patriotism and school discipline. The designer's message is that knowing and exercising your freedoms is important in preserving the American way of life.
- The primary focus of the fifth poster (p. 62) is freedom of the press, with a secondary focus on freedom of speech. An issue is whether books can and should be banned from high school classrooms and libraries. The author's message is that the First Amendment prohibits such banning of books and that citizens are responsible for ensuring that the government adheres to the First Amendment.
- The sixth poster (p. 63) looks at freedom of speech, in this case symbolic speech as represented by walking on the flag. At issue is how to balance conflicting rights or values, such as freedom of speech and respect for the flag. The designer's message is that making tough decisions about the balancing of conflicting rights and values requires an informed citizenry.

Enrichment/Extension:

Encourage students to create their own posters or political cartoons on First Amendment issues. These products could be submitted to the school newspaper or displayed in a common area of the school to stimulate wider discussion of the issues.



Being young and well-informed, you'll have fantastic, great Eureka-type ideas. But what good will that be if it can't be expressed due to the lack of freedom of speech. With the Bill of Rights, your unique ideas, one-of-a-kind solutions, and a whole lot more, will be given due recognition.

Bill of Rights.
Decisions, choices, freedom.

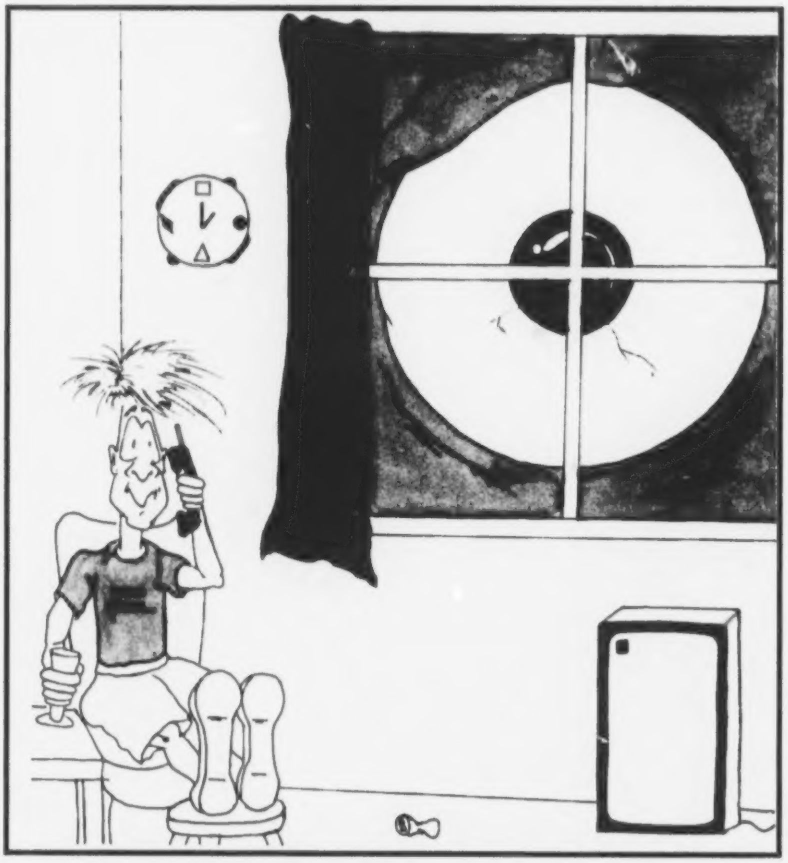
Teng Lim & Mark McKenzie
University of Texas at Austin

UPI/Bettmann Newsphotos

Without the First Amendment

...it might all have been a dream.

Is Someone Watching You?



Scared to speak out on issues such as politics or religion?

Not if you live in the United States. Because each and every one of us is protected by the Bill of Rights.

In 1791, the Bill of Rights was added to the United States Constitution. It consisted of ten amendments guaranteeing basic liberties to all.

Since then, other amendments have been added, ensuring that all enjoy the rights they deserve. Regardless of race, religion or creed.

Our ability to choose the music we listen to or the magazines we read may seem basic. But many are not so lucky.

As citizens, we should not take the Bill of Rights for granted. By reading and understanding it, we can help carry on our nation's tradition of freedom.

Melissa Robison

Virginia Commonwealth University

A high-school senior challenged the school system. And he won.

Thanks to the Bill of Rights.

Because Andrew Banks didn't believe in saying the Pledge of Allegiance, or even standing while the rest of his class participated, he was suspended from high school. But Andrew took it to court.

The court recognized that "standing is an integral portion of the pledge ceremony and is no less a gesture of acceptance and respect than is the salute or the utterance of the words of allegiance." Banks won, due to the First Amendment.

Andrew knew his rights and challenged the school system. He won, knowing that the First Amendment protected his rights.

Read the Bill of Rights and know your freedoms. Two hundred years of the American way of life.

The opinions expressed herein do not necessarily reflect the views of the sponsoring organizations.

Lynn C. Collins
University of Florida

In 1845, a teenager helped free a slave.

Last year, he was kicked out of school for causing racial tension.

It's true. Huck Finn's been banned from many high school classrooms and libraries. But *Huckleberry Finn* is not the only book. Steinbeck's *Of Mice and Men*. Vonnegut's *Slaughterhouse Five*. Even *Little Red Riding Hood* has been taken out. Every day, more and more books are thrown out of our schools.

But thanks to the 1st amendment, many are going back on the shelves. Our government can't make a law "abridging the freedom of speech, or of the press." That means you can read, watch, or listen to whatever you like.

And that means you have to make sure our government keeps this promise. The Promise of your rights.

Find out about your rights. Find out what you can do to keep them.

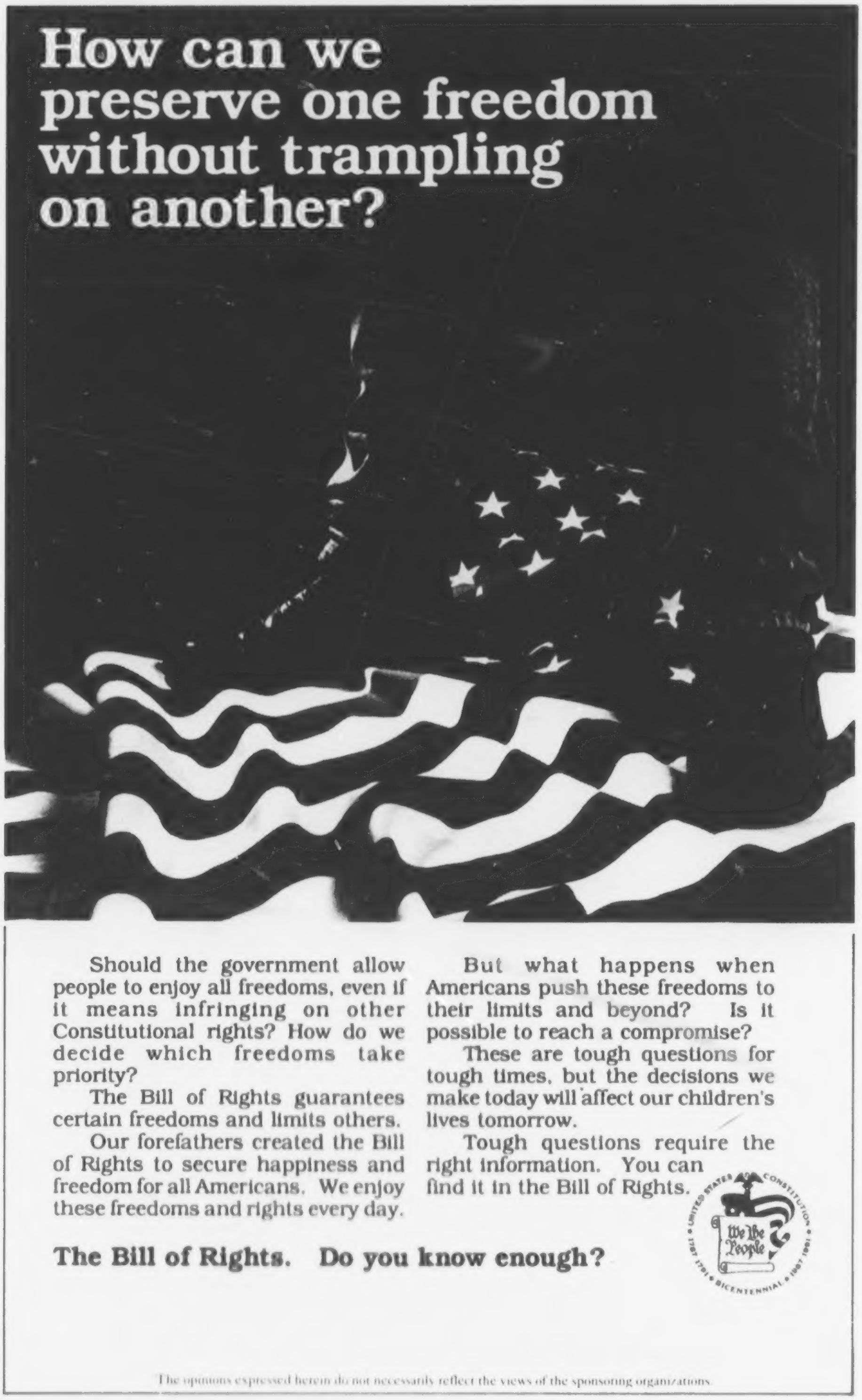
UNITED STATES CONSTITUTION
We the People
1787-1791 ★ BICENTENNIAL ★ 1987-1991

Read the Bill of Rights.
It's the code you live by.

The opinions expressed herein do not necessarily reflect the views of the sponsoring organizations.

James S. McMullen

University of Florida



How can we preserve one freedom without trampling on another?

Should the government allow people to enjoy all freedoms, even if it means infringing on other Constitutional rights? How do we decide which freedoms take priority?

The Bill of Rights guarantees certain freedoms and limits others.

Our forefathers created the Bill of Rights to secure happiness and freedom for all Americans. We enjoy these freedoms and rights every day.

But what happens when Americans push these freedoms to their limits and beyond? Is it possible to reach a compromise?

These are tough questions for tough times, but the decisions we make today will affect our children's lives tomorrow.

Tough questions require the right information. You can find it in the Bill of Rights.

The Bill of Rights. Do you know enough?

The opinions expressed herein do not necessarily reflect the views of the sponsoring organizations.

John Payne & Jeff Pendleton

Western Kentucky University

Visual Analysis Worksheet

Select one of the posters to analyze. Answer the following questions for the poster you selected.

1. What First Amendment right is represented in this poster?

2. What issue or conflict, if any, is shown in the poster?

3. How might this issue affect you?

4. What message about the First Amendment is presented in the poster?

5. Do you agree or disagree with the designer? Explain your reasoning.

Bibliography

The following is a brief "starter list" of resources on the First Amendment and Bill of Rights. The list is organized into three sections: "Curriculum Resources," which includes teacher's guides, lesson plans, and student readers, including a limited number of trade books; "Media Materials," which includes audio- and videotapes as well as computer software; and "Background Reading," which includes works that could help teachers extend their own understanding of the First Amendment and Bill of Rights.

For more extensive bibliographic listings, see the book by Patrick and Leming listed below. *Update on Law-Related Education*, a journal pubilshed three times each year by the American Bar Association, is a useful resource for keeping up to date with new materials and Supreme Court decisions.

Curriculum Resources

America's Conscience: The Constitution in Our Daily Life (New York: Anti-Defamation League, 1987). Reproducible activities focusing on the application of the Bill of Rights to everyday life.

"Bill of Rights," special issue of *Magazine of History for Junior and Senior High School Teachers* V, no. 1 (Summer 1990). Contains several articles on First Amendment issues, as well as lessons on religious freedom, the establishment clause, and school prayer.

Bill of Rights in Action (Los Angeles: Constitutional Rights Foundation, periodical). Free newsletter providing teaching materials and background readings on the Bill of Rights and related issues.

Eveslage, Thomas, *The First Amendment: Free Speech and a Free Press* (Iowa City, IA: Quill and Scroll Society, 1985). 11 chapters containing readings, worksheets, and activities look at such topics as the role of free exchange of information in a democratic society, the role of courts in protecting the right to expression, and limits on free expression.

"Freedom Has a Name: The Bill of Rights," special issue of *Update on Law-Related Education* (Spring 1991). Contains numerous substantive articles and teaching strategies on the Bill of Rights.

From the School Newsroom to the Courtroom (Los Angeles: Constitutional Rights Foundation, 1989). Complete simulation on the student press freedom case, *Hazelwood v. Kuhlmeier.*

Haynes, Charles C., *Religious Freedom in America: A Teacher's Guide* (Silver Spring, MD: Americans United Research Foundation, 1986). Provides teachers with a variety of source materials for integrating the story of religious liberty into the curriculum.

Hentoff, Nat, *American Heroes: In and Out of School* (New York: Delacorte Press, 1987). Stories of young people and educators who have fought to protect First Amendment freedoms.

Hentoff, Nat, *The First Freedom: The Tumultuous History of Free Speech in America* (New York: Delacorte Press, 1988, rev. ed.). Readable analysis of cases related to the freedom of speech.

Hudson v. Daily Metropolis: A Freedom of the Press Mock Trial (Washington, DC: National Institute for Citizen Education in the Law, 1988). A mock trial balancing a father's right to know where his child is being held against the confidentiality of a reporter's sources.

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Lawson, Don, *Landmark Supreme Court Cases* (Hillside, NJ: Enslow, 1987). This collection includes several cases involving religion in schools, providing quotes from people involved as well as descriptions of the court decisions.

Lindop, Edmund, *The Bill of Rights and Landmark Cases* (New York: Watts, 1989). Eight case studies on the Bill of Rights, including cases on freedom of speech and the rights of young people.

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Martha Winstead v. Church of the New Family: A Family Law Mock Trial (Washington, DC: National Institute for Citizen Education in the Law, 1988). A mock trial involving a parent who sues for legal guardianship of an adult child belonging to a cult.

National Archives and Records Administration, *The Bill of Rights* (Boca Raton, FL: Social Issues Resource Series, 1990). A unit on the Bill of Rights, emphasizing the use of primary source documents from the National Archives.

Patrick, John J., and Robert S. Leming, *Resources for Teachers on the Bill of Rights* (Bloomington, IN: ERIC Clearinghouse for Social Studies/Social Science Education, 1991). Sample lessons, copies of related documents, and extensive bibliographic listings.

Repa, Barbara Kate, ed., "First Amendment Rights," special section of *Social Education* (October 1990). Contains substantive discussions, opinion pieces, and classroom activities.

We the People (Calabasas, CA: Center for Civic Education, 1987). Comprehensive unit on the Constitution, including several lessons on First Amendment issues.

Weiss, Ann E., *The Supreme Court* (Hillside, NJ: Enslow, 1987). An overview of the Supreme Court's operation, history, and landmark cases.

Weiss, Ann E., *Who's to Know? Information, the Media, and Public Awareness* (Boston: Houghton Mifflin, 1990). An age-appropriate analysis of the importance of access to information in a democratic society.

Media Materials

The Constitution: For Adults Only? (New York: NBC News Productions, 1989). A 30-minute videotape examining the constitutional rights of teenagers; many actual cases are covered.

The Constitution: That Delicate Balance (Chicago: Films Incorporated, 1984). Developed for PBS, this series of one-hour video programs includes "National Security and Freedom of the Press" and "School Prayer, Gun Control and the Right to Assemble."

Dateline 1787: The U.S. Constitution Convention (Chicago: National Radio Theatre, 1987). Audiocassettes. Radio programs modeled on a nightly news broadcast present debates at the constitutional convention, including those over the necessity for a bill of rights.

The First Amendment and the Ku Klux Klan: Here and Now (Culver City, CA: Social Studies School Service, 1989). This 12-minute videocassette examines the Kansas City case in which the KKK requested a program on the public access TV channel.

Game School Constitution (Neenah, WI: Game School Corporation, 1987). Board game focusing on the provisions of the Constitution and their impact on our society.

Great American Trials: Peter Zenger (Westminster, MD: Educational Enrichment Materials, 1982). Filmstrip/cassette program exploring the impact of the Zenger case on the American constitutional system.

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New Tests of the First Amendment (New York: New York Times, 1980). Filmstrip/cassette focusing on First Amendment cases of the 1960s and 1970s.

The Research Companion: Supreme Court Decisions (Focus Media, 1987). This computer software combines a simulation with a database on landmark cases, many involving First Amendment rights.

This Is a Free Country (Washington, DC: Educational Excellence Network, 1991). Interctive computer-based lessons on rights and responsibilities of U.S. citizenship.

The United States Constitution: Document for Democracy (Chicago: Society for Visual Education, 1986). Color videocassette. Covers the constitutional convention and the application of the Constitution to contemporary issues.

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Alderman, Ellen, and Caroline Kennedy, *In Our Defense: The Bill of Rights in Action* (New York: Morrow, 1991). In-depth studies of civil liberties cases that have made history.

Constitutional Law Dictionary, Volume 1: Individual Rights (Santa Barbara, CA: ABC-CLIO, 1985). Summarizes landmark cases related to individual rights and defines words and phrases critical to understanding these rights.

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Irons, Peter., ed., *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court* (New York: The Free Press, 1988). Case studies on Bill of Rights issues and the people who brought them before the Court.

Levy, Leonard W., *Emergence of a Free Press* (New York: Oxford University Press, 1985). A history of freedom of the press, in theory and in practice. English antecedents and the colonial experience are covered particularly well.

Levy, Leonard W., *The Establishment Clause: Religion and the First Amendment* (New York: Macmillan, 1986). An historical analysis of issues related to the establishment clause.

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Rutland, Robert Allen, *The Birth of the Bill of Rights, 1776-1798* (Boston: Northeastern University Press, 1983). A thorough history of the people, events, and ideas central to development and passage of the Bill of Rights.

EDUCATION FOR FREEDOM

Curriculum Order Form

Please send me

Quantity		Cost
____	Set(s) of *Lessons on the First Amendment for Elementary School Students* (grades K-6) @ $25.00	______
____	Set(s) of *Lessons on the First Amendment for Secondary School Students* (grades 6-12) @ $25.00	______
____	Both sets of lessons (grades K-12) @ $50.00	______

Postage and Handling:

$0 - $50—$3.50
$51-$100—$5.00
$101-$200—$10.00 ______

Total (prepayment required; no purchase orders accepted) ______

Enclosed is my check for $__________, payable to

First Amendment Congress
1445 Market Street, Suite 320
Denver, CO 80202

Name____

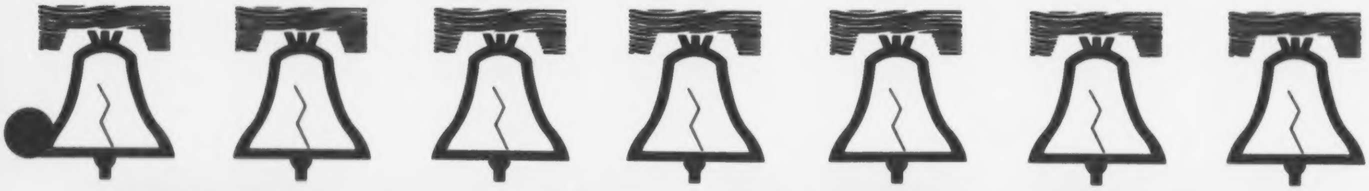
Organization__________________________________

Address______________________________________

City________________ State______________ Zip__________

Telephone (____)________________

Please allow 4-6 weeks for delivery.



EDUCATION FOR FREEDOM

LESSONS ON THE FIRST AMENDMENT FOR HIGH SCHOOL STUDENTS

BY CHARLOTTE REDDEN
WITH DAVID MORGAN

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Contents: High School Materials

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   Students construct a class chart showing rights important to teens. Through a hypothetical case, they identify sources of authority in young people's lives. They then learn what rights are protected by the authority of the First Amendment.

2. First Amendment Freedoms Survey 13
   Students conduct a survey on the importance of First Amendment rights; they compare their generation's perspectives with those of adults.

3. Life Without the First Amendment 17
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   Pairs of students identify how having an established religion would change the United States along 11 dimensions identified on a worksheet.

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6. Freedom of Speech 39
   A decision tree is used to help students analyze issues in which freedom of speech conflicts with other values.

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The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Education for Freedom Project

The First Amendment Congress is a coalition of communications organizations created in 1979. It was established by 12 media associations concerned about the preservation of First Amendment rights; membership has grown since 1979 to include four additional voting members and numerous associate members.

The First Amendment declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." These freedoms assure Americans a government that is responsible to its citizens and responsive to their wishes. These freedoms are the basic rights of all citizens; if they are to be preserved, the vigilance and support of all citizens is required.

As part of its commitment to making all Americans aware of the importance of their First Amendment freedoms, the First Amendment Congress has undertaken the Education for Freedom Project. The goal of this project is to develop and disseminate curriculum materials for teaching about the First Amendment at all levels. This package of materials for high school students represents one part of the Education for Freedom Project's efforts. Similar packages have also been developed for primary, intermediate, and middle school students.

While elementary teachers may initially feel that concepts related to the First Amendment would be better introduced at later grades, research indicates that learning at all levels—early childhood, late childhood and early adolescence, and late adolescence and adulthood—contributes to giving individuals the values, knowledge, and skills needed for citizenship in a democratic society. As Parker and Jarolimek have pointed out, "The emergence of citizens who are informed, skilled participants in democratic processes, and who are guided in their participation by a disciplined commitment to democratic values does not just happen as a result of ordinary living...political learning occurring in early childhood establishes the basic orientations of a person's political identity and the later political learning of adolescence and adulthood adds knowledge and skills. A foundation is laid in the early years on which a structure is later built."[1]

The project materials will address three critical goals or outcomes:

1. Students will understand the history and meaning of the First Amendment and its importance in today's society.

2. Students will understand that the First Amendment belongs to each individual, not to any one segment of society or institution.

3. Students will understand the importance of protecting their First Amendment freedoms through exercising their rights and responsibilities as citizens in our democracy.

Lessons throughout the materials are keyed to these project outcomes.

Major funding for this project was provided by the Knight Foundation. Additional contributions were provided by: The Hearst Corporation, Samuel I. Newhouse Foundation, Inc., Scripps Howard, Star Tribune/Cowles Media Company, and The Times Mirror Foundation.

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[1] Walter Parker and John Jarolimek, *Citizenship and the Critical Role of the Social Studies* (Boulder, CO: Social Science Education Consortium and Washington, DC: National Council for the Social Studies, 1984), pp. 23, 26.

Background on the First Amendment

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

These 45 words—the First Amendment to the U.S. Constitution—embody some of our most important ideas about the meaning of liberty. Isidore Starr, a nationally recognized leader in the fields of law-related and citizenship education, has described the importance of the First Amendment as follows: "Remove the First Amendment from the United States Constitution and you strike out the very means of testing the other rights and of protesting abuses of government."[2]

The First Amendment includes six clauses that cover five basic areas: freedom of religion, freedom of speech, freedom of the press, freedom of assembly, and the right to petition the government for redress of grievances. It may be helpful to briefly define each of these rights.

Freedom of Religion

Two clauses in the First Amendment deal with freedom of religion, and both have given rise to many court cases and controversies. The first, called the "establishment clause," is the provision that "Congress shall make no law respecting an establishment of religion." This clause is the basis for our doctrine of separation of church and state. Many of the controversies surrounding this clause have involved education; for example, can tax money be used to support religious schools? Can schools allow time for prayer or meditation during the school day? Can prayers be said at graduation?

The second clause related to religion is called the "free exercise clause." It protects the individual's right to believe as he/she wishes (or not to believe). The free exercise clause has been especially important in protecting the rights of religious minorities, whose practices might otherwise be suppressed by the majority. For example, Moslems, Buddhists, members of the Unification Church, Jehovah's Witnesses, the Amish, the Mormons, Bahais, and Seventh Day Adventists have used the First Amendment guarantee to protect their rights. Members of religious groups more numerous in the United States, such as Protestants, Catholics, and Jews, have also used the free exercise clause, as have people who do not hold religious beliefs.

At times, the two clauses related to religious freedom have been in conflict. For example, in 1983 the Supreme Court heard a case involving use of state funds to hire a chaplain to offer a prayer at the opening of state legislative sessions. While some people challenged the use of state funds as a violation of the establishment clause, others argued that the prayer represented an exercise of the legislators' free exercise rights.

Freedom of Speech

Freedom of speech is regarded by many as the cornerstone of a democratic system. It allows the free exchange of ideas necessary to effective decision making and protects the minority from complete domination by the majority. Some symbolic speech—actions taken to convey a message—are also protected. The 1989 Supreme Court decision on burning the American flag is an example of protecting such symbolic speech, as is the famous Tinker case, which involved high school students' wearing black armbands to protest the war in Vietnam.

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[2] Isidore Starr, *The Idea of Liberty: First Amendment Freedoms* (St. Paul, MN: West Publishing, 1978), p. 5.

Freedom of speech is not without limits, however. Speech that incites someone to commit a crime, for example, is not protected by the First Amendment. Some issues that have arisen around the freedom of speech include the conflict between free speech and public safety, the extent to which freedom of speech is protected in schools—both for teachers and students—and to what extent obscene or pornographic speech is protected.

Freedom of the Press

Thomas Jefferson emphasized the importance of this freedom when he said "Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I would prefer the latter." Freedom of the press is yet another cornerstone of American democracy. Like freedom of speech, freedom of the press allows divergent viewpoints to be heard. It is designed to protect the public's "watchdog," charged with monitoring government activities and discouraging government from operating in secrecy and from controlling the information citizens receive.

Issues related to freedom of the press are similar to those surrounding freedom of speech—issues related to individual privacy, libel, "fighting words," product advertising, obscenity, and endangering national security. In recent years the conflict between the press's rights and the right of the accused to a fair trial has been confronted in a number of cases. The rights of high school student journalists have also been weakened.

Freedom of Assembly

The right "peaceably to assemble" is bound up with freedom of speech; the right to say what one wishes to an empty auditorium lacks a key ingredient—the audience. The right to hear a speaker is a key ingredient of the First Amendment. Freedom of assembly is also related to freedom of petition. A large group marching down a street with signs espousing their cause may carry a more forceful message than one person's letter to a public official. However, the possibility of conflict arising when groups confront one another has led to some limitations on the right to assembly. For example, cities may require permits for parades or certain kinds of public meetings. This allows the city to take such precautions as providing police protection.

Over the course of U.S. history, the freedom of assembly (along with Amendments V, IX, and XIV), has been used to protect Americans' right to form or join any association or organization they desire. This "right of association" has also been the center of many court cases, including many involving membership in the Communist Party and the NAACP. Cases involving a school district or university that requires teachers to reveal what organizations they belong to have also generated controversy; such requirements have been found to be unconstitutional.

Right to Petition

The right to petition can be traced back to the Magna Carta, signed in 1215. Petitions also played a key role in the efforts of the American colonists to gain a response from the British king and Parliament. Today, the right to petition takes many forms—the traditional written document to which names are signed, lobbying government officials, and conducting various kinds of mass demonstrations. Civil suits in courts are a form of petition. Issues related to the right to petition have primarily arisen when government officials perceived that the exercise of this right threatened public safety.

History of the First Amendment

The First Amendment—indeed the entire Bill of Rights—was not included in the Constitution when it was written in 1787. However, the issue of a listing of rights that could not be infringed upon by the new, stronger national government became a key in the ratification debates. Those supporting the Constitution argued that many state constitutions already protected individual rights and that failure to list the rights did not mean that they did not exist as natural rights, beyond governmental authority.

Opponents, called Anti-Federalists, disagreed. Remembering their experience as British colonies, the Anti-Federalists feared that the stronger national government would abuse individual rights.

To win ratification in Virginia (although the required nine states had already ratified the Constitution, ratification by Virginia and New York was considered critical to the success of the new government), James Madison pledged his support for adding a Bill of Rights through the amendment process. He was true to his word, introducing a proposal for a 17-amendment Bill of Rights in 1789, within two months of the opening of the first Congress. The 10-amendment Bill of Rights was passed by Congress, ratified by 11 states, and went into effect in December 1791.

When the Bill of Rights—and indeed the larger Constitution—was adopted, it applied only to white propertied males. Furthermore, it only protected people from actions by the federal government; state governments could—and did—restrict freedom of expression and religion, as well as other rights. While the rights of African-American males were protected in the Fourteenth and Fifteenth Amendments, passed following the Civil War, in practice those rights took many more years to achieve. The rights of women have also expanded slowly with time, as have those of Native Americans.

It was not until 1925 that the Supreme Court began to apply the First Amendment to the states. This was done through a process called incorporation. The First Amendment rights were "incorporated" into the Fourteenth Amendment's guarantee of due process: "nor shall any state deprive any person of...liberty...without due process of law." Equal protection of the law was also provided by the Fourteenth Amendment.

The groups and individuals who have been afforded the protection of the First Amendment have changed over time, as have the definitions and limits the courts have given the various rights. Today, as the First Amendment enters its third century, its history is still being written.

The First Amendment at School

The Supreme Court has consistently held that young people, while at school, do have the protection of the First Amendment. However, the school is regarded as a special setting, in which the public has charged school officials with maintaining a safe environment conducive to learning. Several recent cases have signalled the Court's willingness to allow school administrators to limit students' rights in order to preserve such an environment.

One case, *New Jersey v. T.L.O.*, dealt with Fourth Amendment rights. In that case, the Court ruled that "strict adherence to the requirement that searches be based on probable cause" is "unsuited to the school environment." The Court instead proposed a test of "reasonableness," which has been applied in subsequent First Amendment cases as well.

A second case, *Bethel School District No. 403 v. Fraser*, involved a student who made a nominating speech filled with sexual references. The student was disciplined. In this case, the Court held that sexual language could be defined as disruptive behavior in school, although it might be protected in other settings. The Court said school officials do have a responsibility to teach students "the boundaries of socially appropriate behavior."

A third relevant case is *Hazelwood School District v. Kuhlmeier*. In this case, the Court said that administrators may exercise "editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

In a 1990 case, *Board of Education of Westside Community Schools v. Mergens*, the Court ruled that if high schools allow clubs not related to the curriculum, they could not discriminate against clubs with a religious orientation. The Court's ruling said "There is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect."

Introduction to the High School Materials

This unit for high school teachers is intended to help them develop students' awareness of the rights identified in the First Amendment of the U.S. Constitution. Eight major objectives form the framework for developing students' awareness of the First Amendment. The objectives are:

- Students will describe the history and development of the First Amendment.
- Students will list the areas covered in the First Amendment and give a definition of each.
- Students will recognize the values underlying the First Amendment's provisions.
- Students will recognize that First Amendment rights are not absolute and that conflicts may arise between these rights and other democratic values.
- Students will describe and take a position on contemporary or historical issues related to each First Amendment freedom.
- Students will recognize the costs and benefits of First Amendment freedoms, both to the individual and to society.
- Students will describe actions they can take to preserve First Amendment freedoms.

The first three lessons provide an introduction to the First Amendment and its importance to a democratic society. The next six lessons cover the six rights guaranteed in the First Amendment, in the order mentioned in the Amendment. The final lesson asks students to think more broadly about all of the First Amendment rights.

The lessons need not be used in the order presented, or in their entirety. While this sequence would work very well if the lessons are used to supplement a U.S. government or history unit on the Constitution, Bill of Rights, or civil liberties, individual lessons can also be used in conjunction with various other topics taught in government and history classes, or in current events. In such cases, they would almost certainly be used in a different order. To facilitate such use, the matrix on the following pages provides a listing of related curriculum topics in history and government. The matrix also provides a general overview of the lessons, including the time and materials required to use them.

All the lessons use a participatory approach that encourages students to discuss, role play, conduct surveys, create projects, and in other ways become engaged in their learning. Although questions for discussion are suggested, teachers are encouraged to develop their own questions to better key the discussion to their students' abilities and interests.

Several of the lessons employ a case study approach. The case study approach involves providing students with hypothetical or real situations in which there is a conflict or dilemma. Students then analyze the facts of the case, reach and support a decision, and weigh the consequences of that decision. A case study requires students to ask questions, define elements inportant to a situation, analyze, synthesize, compare and contrast those elements, and make judgments. The students are, in short, practicing all levels of thinking.

The steps in a case study activity are generally as follows:

Step 1: Review of the Facts. This includes distinguishing between facts that are relevant and important to the case and those that are irrelevant or unimportant. It also should include identifying what important facts are missing.

Step 2: Investigation of Issues/Arguments. This step involves identifying the issue or issues central to the conflict, developing arguments in support of various positions, and evaluating those arguments.

Step 3: Reaching a Decision. In this step, students synthesize the various arguments in order to make and support a decision. If the case being analyzed was a real one, they should compare their decision with the one reached by the court or other decision-making body in the real case.

The case study approach requires the teacher to serve in several capacities—diagnostician, discussion leader, and "climate-maker." The latter may be the most difficult for teachers. In order to develop a favorable classroom atmosphere in which to use the case study approach, the teacher must refrain from dominating class discussion by repeating, commenting on, or asking questions of the same respondent following each remark. Rather, questions and comments should be redirected to other members of the group or class. Also, biases of the instructor regarding a case should be contained; when they are expressed, they should clearly be open to class review and analysis.

Case study lessons can easily be adapted to fit local needs or the curriculum by substituting related cases for those provided in the lesson. The news media are sources of current cases related to First Amendment issues; many of the resources listed in the bibliography at the end of this unit contain other historical case studies on the First Amendment.

Matrix of Activities

Lesson	Focus	Related Outcome*	Materials Needed	Time Required	Related Curriculum Topics**
1. Students and Rights: Beliefs and Realities	First Amendment rights and their importance	1, 2, 3	Handout 1, self-adhesive notes, chart paper	2 class periods	G: Federal system CE: Students' rights
2. First Amendment Freedoms Survey	Importance of the First Amendment	1, 2, 3	Handouts 2-3	2 class periods separated by several days	G or CE: Public opinion polls and their use
3. Life Without the First Amendment	Consequences of losing First Amendment rights	1, 2, 3	Copies of *1984*	1 class period	G: Authority and self-government CE: Authoritarian governments
4. An Established Church in America?	Establishment Clause	1, 2	Handout 4	1-1 1/2 class periods	H: Colonial history G: Role of special-interest groups
5. Free Exercise of Religion	Free Exercise Clause	1, 2	Handout 5, Role Cards, Case Backgrounds	2 class periods	H: Any historical free exercise, case such as the Mormon polygamy case in 1878 CE: Any current free exercise issue

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*1. Students will understand the history and meaning of the First Amendment and its importance in today's society.
2. Students will understand that the First Amendment belongs to each individual, not to any one segment of society or institution.
3. Students will understand the importance of protecting their First Amendment freedoms through exercising their rights and responsibilities as citizens in our democracy.

**All lessons are suitable for use in conjunction with units on the Constitution, Bill of Rights, or civil liberties. Topics listed here are in addition to those.
Key: H = history; G = government; CE = current events.

Lesson	Focus	Related Outcome*	Materials Needed	Time Required	Related Curriculum Topics**
6. Freedom of Speech	Freedom of speech, limits on rights	1, 2	Handout 6	1-2 class periods	H: Any historical free speech issue, such as the Alien and Sedition Acts or limits on free speech in wartime G: Operation of the Supreme Court
7. Freedom of the Press	Freedom of the press, limits on rights	1	Handout 7, reference materials, Handout 8 (optional)	2 class periods	CE: Press issues, Middle East G: Government control of information H: Historical cases of wartime censorship
8. Freedom of Assembly	Freedom of assembly, use of rights	1, 3	Handout 9	1 class period	H: Civil rights movement G: Influencing government policy; law enforcement CE: Current protests such as abortion
9. Petitioning Government	Right to petition	1, 2, 3	Newspapers, reference materials, Handout 10	4 class periods, with the final period several weeks after the first three	G: Influencing government policy H: Development of special-interest groups
10. The First Amendment in Its Third Century	Current meaning of *First* Amendment rights	1, 2, 3	Handout 11 (optional); video *Forty-Five Words of Freedom,* VCR, monitor (optional)	2 class periods	CE: Any current First Amendment *issue*

1 Students and Rights: Beliefs and Realities

Introduction:

This lesson introduces the idea of rights, first by focusing on the rights students believe young people should have and then looking at the rights needed to maintain popular government, particularly the guarantees in the First Amendment. Citizens cannot participate rationally in decision making without a free exchange of ideas and information. Representative government will not remain responsive unless information is available and citizens have the right to make their grievances known. Religious freedom, while perhaps not as obviously tied to democratic government, represents protection of intellectual freedom at the most basic level. One's beliefs affect one's moral code, which dictates how one relates to others in the community.

While this lesson provides a springboard to more detailed study of the First Amendment, it could also launch an in-depth look at students' rights. If study of students' rights is of interest to your class and congruent with your curriculum, several activities in the middle school component of the Education for Freedom *materials would be useful.*

Objectives: At the conclusion of this lesson, students will be able to:

- Define *rights.*
- List the freedoms protected by the First Amendment.
- Describe how First Amendment freedoms help maintain our popular government.
- Explain how the First Amendment, along with the rest of the Bill of Rights, was added to the Constitution.

Time Required: 2 class periods

Materials and Preparation: For the first class period, you will need at least three self-adhesive notes per student (or tape and note-sized pieces of paper). You will also need three chart-size pieces of paper, one each labeled "Home," "School," and "Public."

Write the following sentence starters on the chalkboard. Cover them until needed:

At school, I should have the right to ...
At school, teachers and principals don't have the right to ...
At home, I should have the right to ...
In public, I should have the right to ...
In public, the police or other authorities should not be able to do the following to me ...

For the second class period, you will need copies of Handout 1. You will also need to write the words of the First Amendment (see p. iv) on the chalkboard.

Procedure:

1. Begin by discussing students' definitions of the word *rights.* A dictionary definition that you may use in guiding the discussion is: "the power or privilege to which one is justly entitled."

2. Uncover the sentence starters you have written on the chalkboard. Pass out at least three self-adhesive notes to each student. Tell them they are to write down one right they think young people should have on each note. For now, they should do this individually; they will have an opportunity to share their thoughts later. The sentence starters on the chalkboard can help them generate ideas.

3. Next, have the students post the rights they have written on the appropriately labeled chart paper. Encourage them to note other ideas they see that intrigue them.

4. Lead a discussion of some ideas from each chart. Point out reasons why some rights do not, in fact, exist; for example, they may conflict with adults' views of the safety of young people or the need to maintain an environment that is compatible with learning. Try to get students to agree on three or four rights per chart that they think are priorities in the lives of teenagers.

5. Use this list of rights to spark a discussion on what sources of authority determine whether students actually have those rights. For example, if students said they should have the right to smoke on campus, it may be school board policy or city ordinance that governs whether that right exists. Students' free speech rights are guaranteed by the First Amendment, although the school administration can impose limits. Finish this portion of the lesson by brainstorming reasons the students did not know all the answers. How could they become better informed about their rights?

6. At the beginning of the next class period, remind students of the rights they thought were important for young people. What function did those rights fulfill? Explain that some rights help to maintain our system of government. Ask students to brainstorm what they believe to be the key characteristics of a democratic form of government. Post all answers, but probe to be sure that students mention popular participation in decision making and protection of individual liberties.

7. Next, ask students what rights people must have in order to ensure that democracy, as they have defined it, is maintained. For example, what is needed to ensure that citizens can participate in an informed manner in decision making? Post these responses in a second list on the chalkboard.

8. Draw students' attention to the words of the First Amendment and ask students to identify which items from their second list are provided for in the First Amendment. For example, if they indicated that access to information was important, such access is provided for in freedom of the press and freedom of speech. Go over any of the First Amendment rights not mentioned by students, discussing how they are important to preserving popular government. Freedom of religion may seem least related to students; explain that the freedom to believe as one wishes is perhaps the most fundamental example of intellectual freedom. Because beliefs influence an individual's moral code, they also influence how he or she relates to others in the community. An established religion could dictate nearly all aspects of community life, thereby interfering with other individual liberties.

9. Ask students to speculate on whether there was ever any controversy about whether the First Amendment was necessary. Then distribute Handout 1 and allow time for students to read it. Take an informal poll on whether students think the Bill of Rights was necessary.

10. Assign students to choose the First Amendment freedom they think is most essential to maintaining popular government and write a paragraph explaining their reasons.

Extension/Enrichment:

1. Assign students to research the list of priority rights they agreed on in step 4 of the **Procedure**. Which of these rights do students have? What is the source of those rights? Why do they not have the other proposed rights? What values do they conflict with?

2. Convene a panel of community representatives; this panel might include parents, school board members or school administrators, police officers, judges, attorneys, ministers, labor leaders, and representatives of social service agencies. Prior to the day on which the panel will be held, send the panel members a list of the rights deemed to be priorities by the class. Ask them to comment on why they agree or disagree that young people should have these rights.

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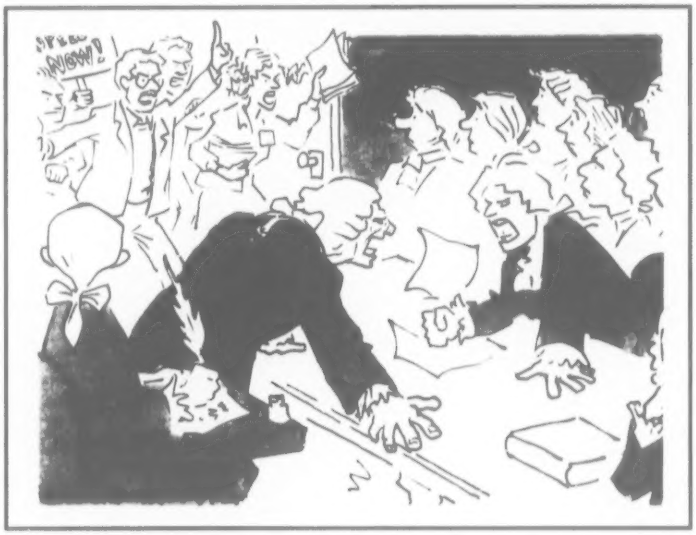
The Debate Over the Bill of Rights



When the Constitution was submitted to the states for ratification in 1787, it did not include a bill of rights. Some delegates to the constitutional convention refused to sign the Constitution because of this omission. It quickly became an issue in the ratification debates.

James Madison, Alexander Hamilton, and John Jay, authors of *The Federalist Papers*, said a bill of rights was unnecessary. They argued that the new government's structure—with separation of powers and checks and balances among the three branches—would prevent rights from being violated. Furthermore, they said the Constitution clearly indicated that the government had limited powers. If a bill of rights were included, it might suggest that only those rights listed in it were protected. Finally, they said a bill of rights was unnecessary because many state constitutions had such guarantees.

The opponents, who were called Anti-Federalists and included such people as George Mason, Edmund Randolph, Elbridge Gerry, and Mercy Otis Warren, said a bill of rights was absolutely necessary. Remembering the tyranny of the British government, the Anti-Federalists feared that the stronger federal government created by the Constitution would abuse the rights of individuals.

After many months of debate, the Federalists compromised with the Anti-Federalists to get the large—and important—states of Virginia and New York to ratify the Constitution. The Federalists agreed that a bill of rights would be added to the Constitution as soon as the first Congress was convened.

James Madison, who had originally opposed a bill of rights, said in his campaign for the First Congress that, if elected, he would introduce a bill of rights. He had come to believe that a bill of rights was necessary. Madison had always been concerned about the majority taking away the rights of minorities; he thought a bill of rights would help the courts protect minorities.

Madison was elected and took on the job of going through all the changes states had suggested when they ratified the Constitution. This was a long list; Virginia alone had suggested dozens. Madison thought the Bill of Rights would have a better chance of being adopted if it was not too long. He drafted a list of 17 amendments that was proposed to Congress. After much debate and rewriting, Congress passed a list of 12 amendments; of those, 10 were approved by the states.

The Bill of Rights

Amendment I:

Freedom of religion, separation of church and state, freedom of speech, freedom of the press, freedom of assembly, freedom to petition the government to right a wrong.

Amendment II:

Right to keep and bear arms.

Amendment III:

Right not to be forced to allow soldiers to stay in one's home in time of peace or in time of war unless procedures described by law are followed.

Amendment IV:

Freedom from unreasonable searches and seizures of self, home, papers, and belongings; no issuing of warrants for search or seizure without probable cause.

Amendment V:

Right to due process of law when accused of a crime; freedom from being tried for the same crime twice and from being forced to testify against oneself.

Amendment VI:

Right to a speedy, public, and fair trial, including a lawyer, when accused of a crime.

Amendment VII:

Right to a trial by jury in civil cases with a claim of more than $20.

Amendment VIII:

Right to fair bail; freedom from excessive fines and cruel and unusual punishment.

Amendment IX:

Guarantee that the listing of rights in the above amendments or elsewhere in the Constitution would not be taken to mean that these were the only rights people had.

Amendment X:

Provision that powers not given to the United States by the Constitution or not prohibited from the states would stay with the states or the people.

2 First Amendment Freedoms Survey

Introduction:

This lesson allows students to examine the importance of all six clauses in the First Amendment. Students select and justify which clauses they feel are most and least important. Then they are challenged to find out how their own opinions compare with those of other students and adults by conducting and interpreting a simple survey. Debriefing of the survey results should focus on the differing interpretations and values respondents reflected in their answers.

As an alternative to using this lesson early in your study, it can be used as a unifying lesson later in the year. The student survey could also be repeated to see how attitudes have changed.

Objectives: At the conclusion of this lesson, students will be able to:

- Understand that there are differences of opinion regarding the meaning and importance of each of the six freedoms listed in the First Amendment.
- Conduct a simple opinion survey.
- Construct a working hypothesis and interpret survey results to evaluate that hypothesis.
- Discuss value conflicts that arise as individuals are forced to prioritize their freedoms.

Time Required: 2 class periods separated by 2-3 days to allow for student work outside class.

Materials and Preparation: You will need one copy of Handout 2 and four copies of Handout 3 for each student. If you have appropriate software available (Survey Taker or Survey Maker, for example), you may wish to arrange for students to computerize their data.

Procedure:

1. Introduce the lesson by reviewing the idea that the First Amendment covers six separate areas; let students identify those six. Though the six are interrelated, they can also be looked at as distinct freedoms. Which is the most important? Does everyone have the same priorities? Leave the questions open and have students complete the brief preview questionnaire (Handout 2) anonymously and independently. Collect the surveys.

2. Working at the chalkboard, have students tally the results into a chart as follows:

	Students		Adults	
	Most	Least	Most	Least
No Established Religion				
Free Exercise of Religion				
Speech				
Press				
Assembly				
Petition				

Note: As an alternative, survey data may be computerized.

3. Engage in an interest-developing discussion about any major differences that appear. Ask students what patterns are evident in the data. Your goal is to find out if students believe there are any age differences in what is seen as important. *Narrow the discussion to comparing the relative importance of the clauses in the First Amendment to two age groups—students and adults.* Try to elicit two such comparisons. For instance, "Adults are more concerned about religion than are students," or "Students care far less than adults about freedom of the press," or "Both students and adults value the freedom of petition the least." Probe to discover their reasoning about why differences exist.

4. Tell the class they will have a chance to check their assumptions by conducting a survey. Have the class state the two comparisons predicted above as simple testable hypotheses. A hypothesis is a tentative answer. If the class predicted no difference at all between students and adults, this also is a testable prediction. An example hypothesis might be: "Students care less about freedom of the press than adults do." *SAVE these hypotheses—survey results will be used to affirm, modify, or invalidate these ideas.*

5. Distribute four questionnaire forms (Handout 3) to each student. They are to ask opinions from two adults over thirty years old (to distinguish from young adults) and two students younger than 21. Remind them to select students who are not in this class (nor in other classes using this questionnaire). Students must mark *ADULT* or *STUDENT* on each completed questionnaire for later coding. Give students two or three weekdays or one weekend to complete the survey.

6. Using the same format as in step 2 above, have four students (two for adults, two for students) tally the questionnaire results for extra credit, outside regular class time. When this lesson resumes, they will present the results to the rest of the class.

7. Write the hypotheses from the first session on the board. Have students who tallied survey results write their findings on the board.

8. Ask whether the results support the hypotheses. Do the data show the predicted patterns? Are other unpredicted differences evident? If there are any surprises, challenge the students to find out *why*. If there are few surprises, challenge the students to summarize the reasoning the respondents offered to support their opinions.

9. Divide the class into four groups; two will look at the adult questionnaires, two at the student. Each group should report back on why the respondents answered as they did, supporting or refuting the predicted patterns. Be specific in telling each group what they should look for. For instance, they should ignore any questionnaire that doesn't deal with their predictions. For example, if the class predicted "Adults value freedom of the press more than students do," then any responses dealing with church and state may be ignored.

10. Have a reporter from each group share their conclusions. Allow time for class discussion.

11. Conclude by having each class member write a summary of the findings, including the reasons offered by respondents. For instance,

> "Both students and adults feel that the freedom of speech is the most important freedom to them. They gave many reasons, including the ability to listen to whatever music they want, to hold unpopular opinions, to socialize with whomever they want, to protest, and to complain about the government without fear."

You may wish to collect and review these conclusions as partial evaluation of the lesson.

Enrichment/Extension:

Allow students to spend additional time analyzing the results of the survey, looking at information that does not relate to their hypotheses. What additional findings could they generate?

Class Preview Questionnaire

The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." It guarantees six identifiable, though interrelated, freedoms:

A. No establishment of religion; also called separation of church and state

B. Free exercise of religion; that is, freedom of beliefs

C. Freedom of speech

D. Freedom of the press

E. Right to peaceably assemble

F. Right to petition the government for a redress of grievances; that is, to ask government to right wrongs

Consider whether these six freedoms are equally important to you or if you feel some are more vital than others. Your opinion is neither right nor wrong. Others may or may not agree with you. Please answer the following questions honestly and candidly. Your answers are anonymous.

Yourself:

Which of the six freedoms listed above matters the *least* to you personally? ____________________

____

Which matters *the most* to you personally? ____

____

Adults over Thirty:

Which of the six freedoms do you think *adults over 30* as a whole care about *the least*?

____

____

Which would you say they care about *the most*? ____

____

Opinion Survey

Mark One: _____Adult Interviewee _____Student Interviewee

Be Sure to Tell Each Person You Interview:

A. You are conducting this survey for a class in high school.

B. Their answers to this opinion survey are strictly confidential. No names will be reported.

C. You want their honest, candid opinion. There are absolutely no right or wrong answers.

Read the Following to Each Interviewee:

We are asking people's opinions about the various freedoms mentioned in the First Amendment to the U.S. Constitution. Six freedoms are listed:

A. No establishment of religion; also called separation of church and state

B. Free exercise of religion; that is, freedom of beliefs

C. Freedom of speech

D. Freedom of the press

E. Right to peaceably assemble

F. Right to petition the government for a redress of grievances; that is, to ask government to right wrongs

Which of the six freedoms listed above matters *the least* to you personally? ______________________

Why?

If that freedom were eliminated from the Constitution, would it make any difference? Please explain why or why not:

Which of the six freedoms listed above matters *the most* to you personally? ______________________

Why?

If that freedom were eliminated from the Constitution, would it make any difference? Please explain why or why not:

Be Sure to Thank Each Person Interviewed.

3 Life Without the First Amendment

Introduction:

Through the lens of science fiction literature, this lesson introduces students to possibilities of living without the guarantees of the First Amendment. Science fiction has a special relevance to life in our changing society. Because it portrays a multitude of alternate futures, it can provide students not only with a means for evaluating the forces affecting their present as well as future lives, but also with the perspective needed to appreciate the possibilities open to society in our rapidly changing political environment.

While this lesson provides an interdisciplinary link between language arts, science, and social studies, it also encourages students to use the lens of creative works of literature to examine the human consequences of abuses of power and technology, cultural and religious conflict, and other First Amendment themes. The lesson focuses specifically on George Orwell's 1984 *but could also be expanded to include discussion of works by Bradbury, Huxley, Le Guin, Silverberg, Wells, and Asimov.*

Objectives: At the conclusion of this lesson, students will be able to:

- Describe possible effects on society of not having First Amendment freedoms.
- Describe possible effects on the individual of not having First Amendment freedoms.

Time Required: 1 class period, plus time for the class to read Chapter 1 of *1984* or for a small group to prepare a dramatization of the chapter. Further reading and discussion of *1984* could continue for several more class periods, if desired.

Materials and Preparation: You will need several copies of George Orwell's *1984*. Several days prior to the class period in which you will use this lesson, assign the class to read Chapter 1 of the novel or select a small group of students from the class to present the chapter in a dramatic form. This may be through a Reader's Theatre approach (turning the actual text of the book into a script) or through a dramatization. You may select students who are particularly good at drama, students who need extra credit in the class, or students with a particular interest in the topic. You may want to schedule one after-school meeting with the group to help them in their preparation.

Procedure:

1. Remind students that works of literature can sometimes provide powerful ways of examining themes related to authority, conflict, and rights. If you are not using the dramatization, proceed to step 2. If you are using the dramatization, tell the class that they are about to see a dramatization of a scene from George Orwell's novel *1984*. The novel depicts a world in which individual rights have been abolished. As students watch, they should look for effects on society and the individual related specifically to the loss of First Amendment rights. Allow time for the small group to present Chapter 1 of *1984*.

2. Ask students to free-write for one minute on what they think the most important effect of losing First Amendment freedoms was. Following the one-minute period, encourage them to share and discuss their responses as a group. Further discussion of the effects of using First Amendment rights can be generated using the following questions:

- What is the significance of the names of the various ministries? How might changes in language be related to the loss of First Amendment freedoms?
- Why do you think keeping a diary was such a serious offense?
- Can you communicate with the future, or, as Winston thought, is this an impossible task?
- Why was the actual writing so difficult for Winston?
- How did the experience of the Two Minutes Hate reflect the loss of First Amendment freedoms? How might freedom of speech or of the press have prevented the Two Minutes Hate from being effective?
- The "Enemy," Emmanuel Goldstein, argued for freedom of the press, freedom of speech, freedom of assembly, and freedom of thought. How is freedom of thought related to the three First Amendment freedoms mentioned?
- Do you think there was freedom of religion in this society? Why or why not?

3. Conclude the lesson by encouraging students to read the remainder of *1984* and consider how it expands their insight into the effects on society and the individual of losing First Amendment rights.

Enrichment/Extension:

Working in small groups or individually, students might create their own scenarios about what life would be like if First Amendment freedoms no longer existed. Interested students might also read and report to the class on how other science fiction writers have described life in a world without freedom of expression and freedom of religion.

Synposis of Chapter 1, 1984:

Chapter 1 introduces the novel's protagonist, Winston Smith, a Party worker in the Ministry of Truth, which deals with news, entertainment, education, and the arts. (The other Ministries are Peace, which deals with war; Love, which maintains law and order; and Plenty, which deals with economic affairs.) Winston has returned to his apartment during the lunch hour to begin writing a diary, an offense punishable by death or 25 years in a labor camp. As he begins writing, Winston thinks about the purpose of keeping a diary ("How could you communicate with the future?...Either the future would resemble the present in which case it would not listen to him, or it would be different from it, and his predicament would be meaningless") and the event that motivated him to begin writing. This event had occurred earlier that day during the Two Minutes Hate, a period devoted to group venom against Emmanuel Goldstein, a former party leader who had written a book arguing for individual freedom and overthrow of Big Brother. At the end of the Hate, while the three slogans of the Party (war is peace, freedom is slavery, and ignorance is strength) were flashed on the telescreen, Winston made eye contact with another worker named O'Brien. Through this brief look, Winston is convinced that others share his contempt for the Party—"a memorable event in the locked loneliness in which one had to live." As the chapter ends, Winston hears a knock at his door.

4 An Established Church in America?

Introduction:

The First Amendment guarantees the separation of church and state. From the perspective of the 1990s, however, this provision often is not appreciated as being dramatic and far-reaching. Students may dismiss the establishment clause as dealing only with a small number of issues such as school prayer. Yet nothing could be further from the truth.

This lesson explores the substantive implications of the establishment clause. To gain appreciation of its meaning, students describe a society and government in which religious tenets are the law. They then compare this society to the United States today, drawing conclusions about the impact of the establishment clause of the First Amendment.

Objectives: At the conclusion of this lesson, students will be able to:

- Recognize that there has not always been separation of church and state in the United States.
- Appreciate that the establishment clause of the First Amendment is valuable to them personally, regardless of their beliefs.
- Describe a government and society in which church and state are fused.
- Compare a Church-State to the United States today along a series of criteria.

Time Required: 1 - 1 1/2 class periods

Materials and Preparation: You will need a copy of Handout 4 for every student.

Procedure:

1. Introduce the lesson by asking students if they can guess which national flag has the inscription "There is no God but God and Muhamad is the prophet of God." (Saudi Arabia) Ask why a religious saying would be on the flag. What does that indicate? (It indicates a strong relationship between church and state. In fact, Saudi Arabia is one of the purest theocracies in the world.) Ask students to speculate on who makes the laws in Saudi Arabia. (All law is the sacred law of Islam, the Shari'a. There is no Congress, no President, no city councils to pass laws. The government is the King, who is the holy interpreter of the sacred laws. *The law cannot be changed.*) Ask students what they think it would be like to live under such a system.

2. Explore briefly the history of established churches in America's colonial days. Ask:

   - Do any of the states in the United States now have an official religion? Did they ever? (No states currently have official religions, but at the time of the Revolution, 9 of the 13 had state religions.)
   - Which did not? (Rhode Island, Pennsylvania, Delaware, and New Jersey)
   - What religions were the official religions in the colonies? (Anglican, Dutch Reformed, and Congregationalist)

- When did the last state de-establish its official religion? (Massachusetts separated church and state in 1833. **Note:** The First Amendment only addressed a national establishment; it did not prohibit **states** from having preference.)
- What difference did having an established religion in those states make? (The effects varied from place to place, time to time. Often, there were legal restrictions on who could live where, vote, run for office, and be on juries. Sometimes it affected whether one could practice one's religion at all. At times, people were driven out, punished, and even killed for not adopting the official, established religion.)

3. Introduce the Establishment Clause of the First Amendment: "Congress shall make no law respecting an establishment of religion." Suggest that this was a dramatic departure from the colonial experience, but one which many Americans have come to take for granted.

4. Inform the class that for the rest of the period, they will be imagining how an established religion might change their lives today. The established religion, which is described on Handout 4, is a fictional religion called Good-ism. Divide the class into working pairs. Give each student a copy of Handout 4. Pairs should brainstorm and generate ideas with each other, but each student should complete the worksheet in her/his own words. Students may elaborate on the description of Good-ism provided on the handout if they wish to do so. This description includes the following information:

Good-ists believe that there is only one God who has established a set of rules that people must follow if they are to be ordained as "Good." Some of these rules are:

- No competitive games or sports.
- No music, poetry, or sculpture.
- No dating before age 30.
- No more than 2 children per family.
- No swearing, gossiping, or telling jokes.
- No eating products from the sea.

In each town, three judges chosen by the church decide whether each person should be ordained as "Good." Once ordained, a person's "Goodness" is reviewed every five years. A person must be 30 to be ordained as "Good." Both men and women can be "Good," as can people of all races.

People who apply to be ordained but fail are called "Tryers." Those who do not even apply are called "Outcasts" and are treated as such.

Young people go to school until age 20. They then work at menial jobs for 10 years without pay. If they are ordained at age 30, they can go on to college or a better job. If not, they must continue in menial jobs and cannot own any land.

People who are ordained as Good not only have the opportunity for a better education and better jobs, they also enjoy a strong sense of community with other Good-ists. Good-ists stand ready at all times to help others who have been ordained, as well as their children (until age 30). The Good-ists take responsibility for ensuring that everyone in their community is well-fed, clothed, and has adequate shelter. Medical care is provided free to Good-ists.

5. To debrief the completed exercise, students should draw conclusions about what difference having an established religion makes. The following questions can be used to stimulate that thinking; either have students write a short essay answering the questions or discuss them the next class period. You may choose whether to collect the worksheets after the essay or class discussion.

- What question showed the largest difference between the two systems? Why?

- Who would find it easiest to live under the established church system? Who would find it most difficult?
- How would an established church affect other freedoms guaranteed by the Bill of Rights?
- Would an established religion, as you imagined it, create a more stable government than we now have? Explain.

Enrichment/Extension:

1. Many conflicts regarding the establishment clause have revolved around education. Specifically, many conflicts have focused on three issues:

- The conduct of religious activities (prayer, Bible reading, activities of clubs with religious affiliations) in public schools.
- Allowing released time from public schools for religious activities.
- Providing financial aid to religious schools.

Divide the class into three groups, assigning one issue per group. Each group's task is to research court decisions regarding the issue, prepare an illustrated timeline showing the cases and their resolutions, and derive, based on their analysis of the cases, a statement of the Supreme Court's position on such cases. Allow one class period for the groups to present the results of their research and discuss the relationship of cases in the three categories to each other.

Possible cases for consideration by the groups are:

Religious Activities in Public Schools:

Engel v. Vitale (1962)
Abington School District v. Schempp (1963)
Stone v. Graham (1980)
Wallace v. Jaffree (1985)
Board of Education of the Westside Community Schools v. Mergens (1990)

Released Time for Religious Activities:

McCollum v. Board of Education (1948)
Zorach v. Clauson (1952)

Aid to Religious Schools:

Cochran v. Louisiana State Board of Education (1930)
Everson v. Board of Education (1947)
McCollum v. Board of Education (1948)
Zorach v. Clauson (1952)
Lemon v. Kurtzman (1971)

2. In the 1971 case of *Lemon v. Kurtzman*, the Supreme Court, in an opinion written by Chief Justice Warren Burger, established three criteria for judging whether laws or governmental actions are allowable under the Establishment Clause:

- The law or action must have a legitimate sectarian purpose; the purpose cannot be religious.
- The primary effects of the law or action must not be to advance or inhibit religion.
- The law or action must not result in "excessive governmental entanglement" with religion.

These criteria, commonly referred to as the *Lemon* test, were applied in the spate of nativity scene cases heard by the Court in the 1980s. Have students research the facts in the cases of *Lynch v. Donnelly* (1984), *Board of Trustees of the Village of Scarsdale v. McCreary* (1985), and *County of Allegheny, Chaban, and City of Pittsburgh v. American Civil Liberties Union* (1989). How would students apply the *Lemon* test in these cases? Does their reasoning agree with that of the court? What changes in circumstances might have made the actions in each of these cases unconstitutional according to the *Lemon* test's criteria?

Note that in the recent establishment clause case of *Board of Education of the Westside Community Schools v. Mergens*, two of the justices, Kennedy and Scalia, did not use the *Lemon* test as the basis of their decision. Instead, their concurring opinion indicated that an action could be judged constitutional if it passed one of two tests:

- It does not "give direct benefits to religion in such a degree that it in fact establishes a state religion or religious faith, or tends to do so."
- It does not "coerce any student to participate in any religious activity."

If students did the previous extension activity, they might analyze how application of these criteria might have changed the Court's decision in such cases as *Wallace v. Jaffree* or *Stone v. Graham*.

3. Assign students to identify and research countries with established religions. How does the established religion influence the factors asked about on the handout?

Recreate History: Church in Your Life

Imagine there is no establishment clause. Instead, the United States has a powerful established, official religion. The established church, known as Good-ism, has great influence or dominance over public events and public law. Some of the basic tenets of Good-ism are described below.

Good-ists believe that there is only one God who has established a set of rules that people must follow if they are to be ordained as "Good." Some of these rules are:

- No competitive games or sports.
- No music, poetry, or sculpture.
- No dating before age 30.
- No more than 2 children per family.
- No swearing, gossiping, or telling jokes.
- No eating products from the sea.

In each town, three judges chosen by the church decide whether each person should be ordained as "Good." Once ordained, a person's "Goodness" is reviewed every five years. A person must be 30 to be ordained as "Good." Both men and women can be "Good," as can people of all races.

People who apply to be ordained but fail are called "Tryers." Those who do not even apply are called "Outcasts" and are treated as such.

Young people go to school until age 20. They then work at menial jobs for 10 years without pay. If they are ordained at age 30, they can go on to college or a better job. If not, they must continue in menial jobs and cannot own any land.

People who are ordained as Good not only have the opportunity for a better education and better jobs, they also enjoy a strong sense of community with other Good-ists. Good-ists stand ready at all times to help others who have been ordained, as well as their children (until age 30). The Good-ists take responsibility for ensuring that everyone in their community is well-fed, clothed, and has adequate shelter. Medical care is provided free to Good-ists.

Write a brief description under each of the following headings about possible differences in your life, or that of your community, if there were an **Established Church.** Then compare or contrast that description with the reality today under the column **No Established Church.**

1. **Who is allowed to vote or run for public office?**

Established Church	No Established Church

2. What is taught in public schools? What is not taught?

Established Church	No Established Church

3. What are the laws about getting married? (e.g., who? when? where?)

Established Church	No Established Church

4. What are the nation's immigration laws—who may/may not come?

Established Church	No Established Church

5. What forms of entertainment are permitted? (e.g., movies, dances, concerts, television?) Which are illegal?

Established Church	No Established Church

6. What kinds of speech are protected?

Established Church	No Established Church

7. What magazines and newspapers are printed?

Established Church	No Established Church

8. Who is allowed to go to college?

Established Church	No Established Church

9. What are the best-paying jobs in this society?

Established Church	No Established Church

10. What are the qualifications to be a lawyer or police officer?

Established Church	No Established Church

11. What are the most common types of crimes?

Established Church	No Established Church

5 Free Exercise of Religion

Introduction:

Where does society's interest in protecting individual rights stop and the government's responsibility for ensuring the public welfare begin? These two fundamental values are at times in conflict. In this lesson, students sort through difficult decisions about free exercise of religious beliefs as guaranteed by the First Amendment.

Students argue specific cases and judge whether an individual's religious freedom should be sustained. Those judgments then are compared to the actual outcomes of the cases. Students then devise a singular rule or standard they believe should be applied in interpreting the current meaning of the free exercise clause of the First Amendment.

Objectives: At the conclusion of this lesson, students will be able to:

- Explain why there are limits on expression of religious beliefs.
- Decide between competing values in a religious freedom case.
- Integrate specific judgments into a single standard applicable to many instances.

Time Required: 2 class periods

Materials and Preparation: You will need one copy each of the Role Cards and Case Backgrounds, and six copies of Handout 5.

Procedure:

1. Review the free exercise clause (..."nor prohibit the free exercise thereof") with the class. Ask students to speculate on how much variability exists among religious groups in the United States. Students may be interested to know that the *World Almanac* lists more than 150 distinct religious groups in its "Census of Religious Groups in the U.S."

2. Lead students in a discussion of the importance of the free exercise clause. What benefits does guaranteeing such freedom have? Help students understand that religious intolerance throughout history has led to conflict and violation of individual rights. Guaranteeing religious freedom helps prevent such intolerance. Furthermore, what one believes about religion underlies what one believes about many other aspects of the world and human relations. Thus, freedom of religion helps protect intellectual freedom more generally.

Discuss with students the Founders' belief that religion was essential to develop the kind of character citizens in a free society need. Do they agree with this position?

3. Read the following quotation from Supreme Court Justice Robert Jackson, written in the 1943 case of *West Virginia State Board of Education vs. Barnette* to students:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

Ask students whether this quotation indicates that there are limits to free exercise. They will probably indicate that no such limits are allowed. This is not the case, however, particularly when it comes to actions, as opposed simply to beliefs. Tell the class that the courts have restricted certain behaviors engaged in because of religious beliefs.

4. Ask students to think about how far outside the mainstream religious groups can venture and still be protected by the First Amendment.

- Are religions that worship multiple gods legally permitted? (Yes)
- What about religions that require the sacrifice of animals? (Yes, if within limits of statutes about safety and cruelty to animals)
- What about a religion that holds that each man should have more than one wife? (No, polygamy is illegal everywhere in the United States)
- What about religious worship that involves handling of poisonous snakes by both adults and children? (Children should not be subjected to the risk of death; adults may make up their own minds)

5. Advise students they will now have a chance to judge certain real issues that have arisen concerning free religious expression. Each student will have a role in deciding the outcome of a specific controversy.

6. Divide the class into six groups, giving each group one case description to read. Two students per group will receive roles (plaintiff and defendant) to enact. The other students in each group will be a panel of judges (or in case six a jury) to decide the merits of the case as argued before them. (**Note:** If you do not wish to do this activity as a small-group exercise, you might select two or three of the cases to discuss as a class.)

7. Have the 12 students who have roles to play move to the back of the class (or quietly outside the door, if feasible) to study their roles and decide exactly what they want to say on behalf of the positions they represent. Tell them they will have ten minutes to prepare their statements: they may make notes to speak from. Each speaker will have three minutes to argue their side of the case.

If these students remain in the classroom, ask them to pay no attention to the judges' briefing you will be conducting in the front of the class.

8. While the plaintiffs and defendants are studying and preparing their roles, brief the judges on how to conduct the proceedings. Write the rules on the board or have them on a poster already:

- No speaker may be interrupted.
- Plaintiff speaks first. He or she has three minutes.
- Defendant speaks second, again for three minutes.
- Judges may question either party for an additional four minutes.
- Judges will vote either for the plaintiff or defendant. Majority rules.

While waiting for the role players to prepare, have all judges write down questions they would like answered.

9. After ten minutes the role players and judges should be ready. Have each group form a semicircle: judges in the center and the two role players on either side arranged so they can see each other. Answer any last-minute questions.

10. Advise the class to begin their proceedings. At the end of each portion of the proceedings (outlined in point 8 above), call time and announce the step that comes next.

11. When all judges have voted and each issue has been decided, pass out Handout 5 to each group. Together the group will complete the questions. Emphasize the importance of understanding the values that were competing and the reason the judges decided as they did. Allow 10-15 minutes for the exercise.

12. Have each group report to the full class all the information contained on the handout. Class members may question the participants about the case or their decision-making rationale. At the end of each group's presentation, have one of the participants write on the board the answer they gave to question 7 (the relation of religious freedom to other individual rights).

As each group completes its report, provide the actual outcome of the case. *Do NOT present these as the CORRECT ANSWERS.* Actual cases are complex, and these cases were selected to show how difficult deciding in real life can be.

- **Case One:** YODER won. The Court found that the Amish way of life is church-oriented. Having the children attend high school put that way of life at risk. Allowing the Amish to maintain their community was judged more important than compulsory education. The Court did say, however, that the state could develop standards for the continuing education to be provided by the parents and church.
- **Case Two:** OREGON won. The Court ruled 6-3 that governments may prohibit the use of drugs in religious ceremonies. The ruling effectively abolished the requirement that governments show a "compelling interest" that should be protected in favor of religious freedom. Many religious groups were alarmed by the ruling.
- **Case Three:** WELSH won. The Court decided that Welsh's moral convictions functioned as a religion in his life, whether or not Welsh called himself religious. Therefore, he was allowed conscientious objector status.
- **Case Four:** BARNETTE won. The Court in essence reversed the *Gobitis* decision handed down only three years earlier. The quotation on page 19 was from the majority opinion in this case.
- **Case Five:** UNITED STATES (IRS) won. The Court decided that societal interests in supporting racial equality were so compelling that they overrode the issue of religious freedom.
- **Case Six:** MASSACHUSETTS won. The state's interest in protecting children overrides the parents' right to religious beliefs. Parents may not endanger their children. This case is likely to be appealed.

13. When all groups have reported, turn students' attention to the six responses on the board. Have the class determine threads of commonality by focusing on similarities and differences. Ask them to design a summary statement to describe the parameters of free exercise of religion. The statement might take any of several forms, such as:

Free exercise of religion should prevail whenever....

or

Only in cases when ______________________ is threatened should free exercise of people's religious beliefs be limited.

It is beneficial for the students to struggle with the language and the concepts, since this teaches an appreciation for (a) balancing values and (b) how painful limiting our freedoms is. You may find that it will work better to have students work on the statement in small groups, in which the opportunities for individual participation will be greater. The statements produced by small groups can then be placed around the room for later application.

Enrichment/Extension:

Have students apply their standard for limiting the free exercise of religious beliefs to cases they encounter as they continue their study of U.S. history or to cases that are currently in the news. Does the standard work? Why or why not? How might the standard be refined to better accommodate additional cases?

CASE ONE:
State of Wisconsin v. Jonas Yoder, et al. (1972)

Jonas Yoder and his family are members of the Old Order Amish religion, which dates back to the 16th century. The religion requires a simple life apart from worldly influences.

After Yoder's 15-year-old daughter finished eighth grade in the local public school, he refused to send her to high school. Wisconsin has a law requiring school attendance or until students reach age 16. There are penalties for breaking the law; Yoder was fined $5.

CASE TWO:
Oregon Employment Division vs. Smith (1990)

Alfred Smith and Galen Black were members of the Native American Church. Some of the church's rituals involve use of peyote, a cactus derivative containing the hallucinogen mescaline. The two men ingested peyote during religious rituals. As a result, they were fired from their jobs at a drug rehabilitation program.

When Smith and Black filed for unemployment benefits, they were turned down, again because of their use of peyote, which Oregon law made it a crime to possess or use. Although use in religious ceremonies is exempted from criminal penalties by federal law and by the laws of 23 states, Oregon provided no such exemption. The men sued, saying that the state violated their rights to free exercise of their religion.

CASE THREE:
Welsh v. United States (1970)

Various religions, such as the Society of Friends (Quakers) oppose war in any form. A 1940 U.S. law exempted persons from military action if they opposed all war due to their "religious training and belief." In 1948 Congress defined "religious training and belief" as "an individual's relation to a Supreme Being involving duties superior to those arising from any human relation, but [not including] essentially political, sociological, or philosophical views or a merely personal moral code."

A 1965 Supreme Court case further defined beliefs sufficient to qualify for exemption. Justice Clark stated the new rule as: "A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God."

Welsh was convicted of refusing to be drafted into the Armed Forces. He claimed he was a conscientious objector. His opposition to war *did not* arise from religious objections, he said. However, he did feel strongly that killing was immoral and totally repugnant.

CASE FOUR:
West Virginia State Board of Education v. Barnette (1943)

Jehovah's Witnesses believe that saying the pledge of allegiance to the flag is forbidden by the Ten Commandments. In the 1940 *Gobitis* case, the Court ruled that children of Jehovah's Witnesses must participate in the flag salute in public school. The Court said that the flag is a symbol of national unity and the pledge was necessary to promote patriotism.

Despite that ruling, Barnette, a Jehovah's Witness, did not allow his children to participate in the flag salute. His child was expelled; West Virginia officials threatened to send him to a state reformatory. Barnette was subject to a fine and jail. Lower appeals courts held that the *Gobitis* precedent meant Barnette had no protection under the First Amendment.

CASE FIVE:
Bob Jones University v. United States (1983)

The Internal Revenue Service (IRS), which administers federal income taxes, has rules exempting "charitable organizations" from paying income taxes. In 1970 the IRS ruled that any institution that discriminates racially could not be called "charitable." Discriminatory institutions lost their tax-exempt status and had to pay income taxes. Contributions from the public to those institutions were no longer tax-deductible.

Bob Jones University, a private, nonprofit, church-sponsored college in South Carolina, lost its tax-exempt status because of its policies. Specifically, the IRS found that Bob Jones did not allow interracial dating and refused admission to any student involved in an interracial marriage or dating or who advocated these actions. Bob Jones University claimed these policies are part of their religion. They sued the IRS to regain their tax-exempt status based on the First Amendment guarantee of free religious expression.

CASE SIX:
Massachusetts v. David and Ginger Twitchell (1990, Mass.)

This case is before a criminal trial court in Boston, Massachusetts. The jury will find the innocence or guilt of David and Ginger Twitchell in the death of their 2 1/2-year-old son Robyn. They are charged with involuntary manslaughter. Manslaughter, a lesser charge than murder, means the unlawful killing of a person without the intention for that to occur.

Robyn Twitchell died of bowel obstruction after five days of being ill. The Twitchells did not seek traditional medical assistance. Instead, as members of the Christian Science Church, they relied on prayer and faith, as the Church teaches.

Medical authorities say there must have been symptoms, such as fever, vomiting, and severe pain, which would signal serious illness. They also testified that medical treatment would have saved Robyn's life.

CASE ONE:
State of Wisconsin v. Jonas Yoder, et al.

Jonas Yoder: Defendant, claiming free exercise of religion

Main Points:

Requiring my children to go to high school will necessarily expose them to worldly values, which we do not believe in.

The Amish religion requires us to lead simple lives apart from the rest of the world. Amish people have done this very well for hundreds of years.

The First Amendment guarantees us the right to our religious beliefs. This is not possible if our children are taken away from the Amish community to attend high school.

Elementary school is allowed according to Amish belief because students learn the basic three R's there. In Amish society, there is no need for the intellectual and scientific curriculum taught in high schools.

CASE ONE:
State of Wisconsin v. Jonas Yoder, et al.

State of Wisconsin: Plaintiff, claiming greater social good limits religious expression

Main Points:

The State of Wisconsin set the age 16 rule for a good reason. ALL children are entitled to a quality education to prepare them for the future.

Public high schools bring together students of different backgrounds so they may learn to live together, sharing and learning from each other.

If Amish children choose as adults to leave the Amish community, they will be ill-prepared to deal with the non-Amish world unless they have the chance to attend high school.

Meeting the educational needs of children is one of the most important duties of the State.

The public expects that all children, regardless of their religion, will have the chance to get an education at public expense until they are 16.

The Amish may freely practice their religion, but the State believes the education of children outweighs the argument about free expression of religion in this case.

CASE TWO:
Oregon Employment Division v. Smith

Oregon Employment Division: Plaintiff, claiming Smith and Black are not protected by the free exercise clause

Main Points:

State law is very clear that possession or use of peyote is a crime. Thus, evidence of its use is cause for dismissal from a job at a drug rehabilitation program. People who are fired for cause are not eligible for unemployment benefits.

The state—and in fact the entire country—face a serious drug problem. To solve that problem, tough laws are needed. Because of the seriousness of the drug problem, the Oregon state legislature chose not to make exemptions in the law for religious use of drugs. Because of the drug crisis, the state's interest in regulating drug use is more important than the defendants' right to free exercise of their religious beliefs.

CASE TWO:
Oregon Employment Division v. Smith

Alfred Smith and Galen Black: Defendants, claiming free exercise of religion

Main Points:

Use of peyote has been a part of the religious rituals of the Native American Church for centuries. Twenty-three states and the federal government recognize our right to free exercise of our religion by exempting our use of peyote from their drug laws.

Use of peyote in religious ceremonies is nothing like the irresponsible recreational use of unlawful drugs that the state of Oregon wishes to control. Peyote is used in prescribed ways and poses no danger to anyone else. Thus, the state does not have a compelling interest in regulating use of peyote in the Native American Church.

Our right to exercise our religious beliefs was violated by the state of Oregon Employment Division when it denied us benefits.

CASE THREE:
Welsh v. United States

Mr. Welsh: Plaintiff, claiming free exercise of personal beliefs

Main Points:

I believe that human life is valuable in and of itself; therefore I will not injure or kill another human being.

I object to war in any form and could not live with my conscience if I were forced to participate in the military.

I believe that our military complex wastes both human and material resources. In conducting war, we are failing our responsibilities as a nation.

Though not a believer in any given religion, I have profoundly held convictions that war is wrong.

CASE THREE:
Welsh v. United States

United States: Defendant, claiming Welsh cannot be protected by the free exercise of religion clause

Main Points:

The First Amendment protects only the "free exercise of religion." Mr. Welsh proclaims no religion and the First Amendment is therefore irrelevant.

Since no religion is involved here, it is up to the government to decide what grounds are sufficient to qualify for conscientious objectors.

Congress specifically prohibited granting conscientious objector status to persons claiming to object on the basis of a merely personal moral code. Mr. Welsh is acting on just such a personal code.

Our nation's security demands well-equipped armed forces. This requires drafting men into those forces. Congress does not intend to make it easy to avoid the draft.

CASE FOUR:
West Virginia State Board of Education v. Barnette

West Virginia State Board of Education: Plaintiff, claiming societal and national values supersede religious values

Main Points:

The nation is engaged in a struggle for its existence in the Second World War. We cannot tolerate disrespect for our flag even in peacetime, but certainly not in these dangerous times.

The Supreme Court just ruled three years ago in the *Gobitis* case that students may be mandated to salute our flag. West Virginia is following a clear legal precedent.

As Justice Frankfurter said in *Gobitis*, "national unity is the basis for national security."

Patriotism and political responsibilities to the community outweigh any single individual's religious freedom.

CASE FOUR:
West Virginia State Board of Education v. Barnette

Barnette: Defendant, claiming freedom of religious beliefs

Main Points:

The First Amendment clearly allows me and my children to have freedom for our religious beliefs. Our church, the Jehovah's Witnesses, is well established and has hundreds of thousands of members nationwide.

We believe, as the Bible teaches, that we can worship only one God. The Ten Commandments teach: "Thou shalt have no other gods before me," and "Thou shalt not make unto thee any graven image." Therefore we are bound by the Lord's commandments not to worship any image, including the American flag.

We do respect the American flag and acknowledge it as a symbol of freedom and justice.

Children of Jehovah's Witness Church should not be punished by expulsion or reform school for simply holding to their personal religious beliefs.

Dissent and disagreement in our free country is not a sign of weakness, but rather of our strength as a people.

CASE FIVE
Bob Jones University v. United States

Bob Jones University: Plaintiff, claiming freedom of religious beliefs

Main Points:

In denying us a tax-exempt status, the federal government is severely impinging on our rights to our religious beliefs. Without tax-exempt status, we have to pay taxes, thereby increasing our costs—costs students and their families must pay.

Private donations help keep student costs down. But our college will not receive as many private donations if donors cannot deduct these gifts on their income taxes. Bob Jones University and its students are being penalized financially. The federal government is undermining the economic health of a religious institution.

The First Amendment guarantees everyone the right to hold their own religious beliefs. Bob Jones University has policies on student admission that reflect the beliefs of its students and its benefactors.

It is not a public institution; rather, it was founded to give students who hold the same religious views the opportunity to gather together to receive good Christian education. Harming the college's finances limits the university's ability to continue its function of providing religious education in a religious environment to students who choose our college.

CASE FIVE
Bob Jones University v. United States

United States: Defendant, claiming other social values are more important than freedom of religious beliefs

Main Points:

Congress gave the Internal Revenue Service (IRS) the responsibility of defining the term "charitable organization" and deciding on a case-by-case basis which organizations can therefore claim tax-exemption. The IRS code is a logical extension of Congressional intent, namely that only those institutions that serve the public good should receive a tax-exemption.

The policies of Bob Jones University in advocating and practicing racial discrimination are clearly contrary to public policy, which is to create more harmonious race relations in the United States.

Bob Jones University is free to hold and practice all of its religious beliefs, including racial discrimination, but NOT with a tax-exemption. The public's purpose in allowing tax-exemptions at all is to further public goals, including prohibiting racial discrimination.

CASE SIX:

Massachusetts v. David and Ginger Twitchell (1990, Mass.)

State of Massachusetts: Plaintiff, claiming society's obligation to children is more important than free religious expression

Main Points:

The Twitchells did not exercise prudent care when their son became gravely ill.

The death of Robyn Twitchell resulted from the wanton and reckless conduct of his parents. In the face of Robyn's great pain and suffering, they never took him to a doctor or any medical facility. Since he died as a result, this is manslaughter.

They could have changed their minds when Robyn's illness continued. Yet, after a few days of Robyn's failure to get well, the Twitchells continued to rely on spiritual healing.

Robyn Twitchell was too young to choose his method of treatment. His fundamental right to health and even life was denied him because of his parents' beliefs.

Massachusetts has the fundamental obligation to protect the health and well-being of its residents, especially those too young to protect themselves.

CASE SIX:

Massachusetts v. David and Ginger Twitchell (1990, Mass.)

David and Ginger Twitchell: Defendants, claiming the right to religious freedom

Main Points:

We are faithful Christian Scientists. The Christian Science Church has relied on spiritual healing since its founding in 1879.

The Church teaches that illness is an illusion that can be remedied by the correct understanding of God's divine word. Christian Scientists worldwide believe that prayer and faith will heal any illness; we have thousands of cases to substantiate our claim. David's own mother was cured of polio through spiritual healing.

We were not reckless or acting irresponsibly. We sought the best care possible for Robyn, the care of the Lord.

The First Amendment guarantee of religious freedom applies in this case, since our religion clearly tells us how to act in cases of illness.

Case Analysis

CASE NAME:____

Based on the case you have just discussed, complete the following questions as a group. Answer carefully. This is the summary and analysis you will be presenting to the class.

1. In a single sentence, what was the CENTRAL ISSUE in this case?

2. What did the party claiming RELIGIOUS FREEDOM argue?

3. What was the main argument AGAINST THE RELIGIOUS position?

4. In summary, what CONFLICTING VALUES did your case pose?

5. What was the DECISION of your group?

6. What argument(s) seems MOST PERSUASIVE in leading you to decide as you did?

7. *In this case,* describe the RELATION OF RELIGIOUS FREEDOM to other individual rights.

6 Freedom of Speech

Introduction:

This lesson is designed to help students identify for themselves when the freedom of speech should be limited. One of the most difficult but important questions the public faces is: If freedom is not absolute, then what circumstances justify a limitation? The lesson introduces standards that have been used in answering this question. Students then evaluate numerous instances and apply such standards, deciding specifically the beneficial or harmful consequences of the particular speech in question. Finally, students determine what values underlie the perceived need to limit speech, uncovering and discussing conflicts between freedom of speech and other values.

Objectives: At the conclusion of this lesson, students will be able to:

- Recognize that the freedom of speech is not absolute.
- Identify several common limits on the freedom of speech.
- Analyze issues in which freedom of speech conflicts with other values.

Time Required: 1-2 class periods

Materials and Preparation: You will need a copy of Handout 6 for every student.

Procedure:

1. Review the benefits of freedom of speech in a democracy. Point out that the First Amendment says "Congress shall make no law...abridging the freedom of speech." That sounds very straightforward and simple. Ask the students to imagine, however, this scene:

> You are at a rival school across town for a game one evening. Suddenly you find yourselves alone, surrounded by angry, taunting students from the other school. The crowd shouts, "You'll never get home tonight alive!" "You're gonna pay for being here!" You literally fear for your life. No one has touched you. You haven't been hurt—yet.... Does the crowd have the constitutional right to threaten you?

Use student discussion as a springboard for the idea that society and the courts have agreed upon limits to freedom of speech. In the example, the hecklers are causing a dangerous situation that could readily get out of hand. At a minimum, they are causing great distress to the surrounded students.

2. Distribute Handout 6. If your students are not familiar with the decision tree tool, you may want to go over its use with the class. You may also want to discuss symbolic speech with the students before they complete the worksheet. Have students work in small groups to complete the worksheet, using the decision tree as a way to structure their debate over the cases. (The worksheet could also be completed individually.)

3. When students have finished, have them take turns explaining *what they decided in each case and why*. Check which groups or students agreed and which disagreed. When disagreements arise, refer to the decision tree, discussing (1) different interpretations of whether there was a wrong at stake, (2) different conclusions about how probable that wrong was, and (3) conflicting values.

The following notes are provided for your use in debriefing the activity.

Case 1: This case, which involved the National Socialist Party of America and the Village of Skokie (a suburb of Chicago), generated rulings in both Illinois state and federal courts. The Illinois Supreme Court, by a 6 to 1 margin, held that displaying swastikas was a form of symbolic speech protected by the First Amendment. The court further held that the "fighting words" doctrine developed by the Supreme Court did not permit "prior restraint" of the Nazis' speech. Such prior restraint to prevent violence, which the court admitted was a possiblity, amounted to a "heckler's veto." A month later, a federal district judge ruled that Skokie's ordinances were unconstitutional, holding that not only did the ordinances censor certain kinds of speech, they provided for censorship on the basis of what might be said, rather than what was actually said. The judge said "The ability of American society to tolerate the advocacy even of the hateful doctrines espoused by the plaintiffs without abandoning its commitment to freedom of speech and assembly is perhaps the best protection we have against the establishment of any nazi-type regime in this country." This decision was upheld by the court of appeals; the Supreme Court refused to hear the case.

Case 2: In the case of the *United States v. O'Brien*, the Supreme Court ruled 8 to 1 against the protestors. The court held that Congress had the authority to raise armies and could therefore require that draft cards be handled in particular ways. The military purposes of the draft law outweighed O'Brien's right to expression through symbolic speech (i.e., the burning of his draft card).

Case 3: This case, *Rankin v. McPherson*, arose after the attempt on President Reagan's life in 1981. The Supreme Court ruled that the statement made by McPherson was not actually a threat on the president's life. Further, simply making the remark did not show that McPherson was unfit for her job or interfering with the conduct of the sheriff's office.

Case 4: In this case, *Frisby v. Schultz*, the Supreme Court upheld the ordinance of the city of Brookfield, Wisconsin, citing the principle that government can restrict the time, place, and manner of expression. The Court pointed out that the demonstrations were targeted at a single household and that the demonstrators were not trying to get their message across to the general public. Through their demonstrations, they violated the doctor's right to a safe and secure home. Dissenters in this decision felt that Brookfield's ordinance was too vague, since it prohibited all picketing in residential neighborhoods.

Case 5: In this case, *Sable Communications of California v. FCC and Thornburgh*, the Supreme Court said that the government could ban "obscene" communications but not "indecent" communications. While the Supreme Court agreed that preventing children from hearing indecent messages was a valid goal, it did not think this goal justified making indecent communications illegal. The confusion arising from this (and other) cases is that the Court did not define "indecent," making it difficult to differentiate between obscene and indecent messages.

4. Conclude by pointing out how hard it sometimes is to decide on issues involving freedom of speech and such other values as national security.

Enrichment/Extension:

1. To help students understand that freedom of speech is very much a contemporary issue, have them scan the newspaper for approximately one week to see how many articles regarding freedom of speech issues they can find. Each article could be clipped and glued onto a piece of paper. Beneath the article, students could indicate whether, using the decision tree from the handout, the speech at issue would be protected in their opinion.

2. Students interested in creative writing might develop scenarios describing what life would be like without freedom of speech. What kind of government would be possible without freedom of speech?

Handout 6

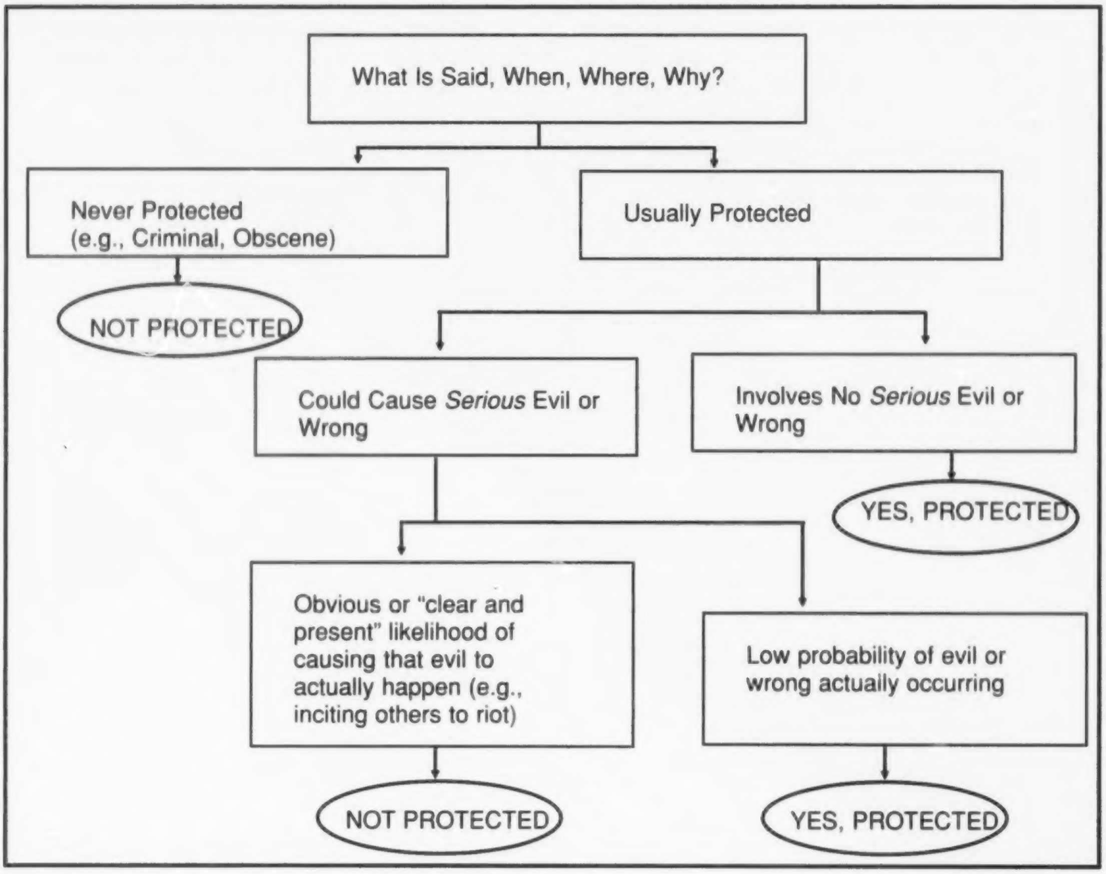
Limits on Freedom of Speech?

Does the First Amendment mean anybody can say anything at any time? Such a strict interpretation has been rejected by the Supreme Court.

Because the amendment has such strong language, we do start with the presumption that any given speech is protected. The Courts must decide whether another public interest—for example, national security, justice, personal safety, or freedom of religion—overrides freedom of speech. There are no simple rules for doing this, but there are some *generalizations* that help.

First, some kinds of speech are never legal. For example, agreeing to murder someone and lying to a jury are never legal and have no First Amendment protection. Most speech is protected, however. Exceptions result *when the speech is shown to be highly likely to lead immediately to a serious evil or wrong.* Urging an angry mob to lynch someone is not protected.

The following decision tree illustrates how courts decide in free speech cases. Starting at the top of the tree, the first decision is whether the speech falls into one of the categories that is never protected. If it is usually protected, the next decision is whether it could cause a serious evil or wrong. If it could, the final decision concerns how likely it is that the evil or wrong will actually occur.


What Is Said, When, Where, Why?
Never Protected (e.g., Criminal, Obscene)
Usually Protected
NOT PROTECTED
Could Cause *Serious* Evil or Wrong
Involves No *Serious* Evil or Wrong
YES, PROTECTED
Obvious or "clear and present" likelihood of causing that evil to actually happen (e.g., inciting others to riot)
Low probability of evil or wrong actually occurring
NOT PROTECTED
YES, PROTECTED

In the following cases, decide whether the speech is protected by the First Amendment. Use the decision tree on the preceding page and your best judgment in making your decision. If you decide an example is not protected, describe the harmful consequences that might occur and identify what *value* directly conflicts with free speech.

Case 1

A group of Nazis decided to hold a demonstration in a city with a large number of Jewish residents, many of whom survived the Holocaust. The Nazis wanted to display the swastika, a symbol of Nazi beliefs and of the Holocaust itself. The citizens of the city were not only deeply offended by the Nazis' beliefs but feared that violence would result if the Nazis were allowed to parade through their streets with the swastika.

The city government passed several ordinances regulating public demonstrations. These ordinances required that the organizers of any parade or assembly to involve more than 50 persons obtain insurance coverage. The ordinances also gave the city council the authority to deny a permit for a demonstration if that demonstration might result in disorder. The council also banned demonstrations by members of groups wearing military-style uniforms, as well as all demonstrations that "incite violence, hatred, abuse, or hostility toward a person or group of persons by reasons or reference to religious, racial, ethnic, national, or religious affiliation."

The Nazis then sued, declaring that the ordinances unconstitutionally interfered with their right to free speech.

- Is this speech protected?
- If not, what harm would occur as a result of the speech?
- What value or right is conflicting with free speech in this case?

Case 2

In 1966, to protest the Vietnam War, four friends burned their draft cards on the steps of the South Boston Courthouse. After the cards were burned, a crowd that had been watching attacked the four young men. An FBI agent in the crowd took the men into the courthouse, where they were arrested and charged with violating a law that made it illegal to destroy or mutilate a draft card. The protestors said that this law unconstitutionally denied them freedom of speech.

- Is this speech protected?
- If not, what harm would occur as a result of the speech?
- What value or right is conflicting with free speech in this case?

Case 3

After a public official was wounded by a gunman, a woman remarked to a friend that "If they try again, I hope they get him." She was fired from her job as a computer operator in the sheriff's department because someone overheard the comment. The woman sued, saying that her dismissal violated her right to free speech. Her employer argued that the woman's comment was disruptive of the work environment in a law enforcement office, as well as being a threat to a public official.

- Is this speech protected?
- If not, what harm would occur as a result of the speech?
- What value or right is conflicting with free speech in this case?

Case 4

A group of people opposed to abortion decided to picket the home of a doctor known to perform abortions. For a month, the group sent 10 to 40 demonstrators to the doctor's house each day; the demonstrators usually stayed for an hour or two. They carried signs calling the doctor a killer and talked to people who walked or drove by. The doctor accused the picketers of trespassing on his property and damaging some plants.

The town board passed an ordinance banning picketing in residential areas. The anti-abortion group sued, saying that the ordinance violated their freedom of speech.

- Is this speech protected?
- If not, what harm would occur as a result of the speech?
- What value or right is conflicting with free speech in this case?

Case 5

The federal government passed a law making it illegal to offer commercial, interstate services that involved "obscene" or "indecent" telephone communications. The law was aimed at "dial-a-porn" services. These services provided a taped, sexually explicit message that is activated when customers dial a phone number. Customers are charged for the call.

One company sued, claiming that the law was unconstitutional under the First Amendment.

- Is this speech protected?
- If not, what harm would occur as a result of the speech?
- What value or right is conflicting with free speech in this case?

7 Freedom of the Press

Introduction:

One of the roles of a free press is to serve as a "watchdog" for the citizenry. This role inevitably brings the press into conflict with the government, which has an interest in controlling the information that citizens receive. This lesson focuses on that conflict, using the Persian Gulf War as a case study for student discussion and debate. A more current issue (if available) could be substituted if desired by the teacher.

Objectives: At the conclusion of this lesson, students will be able to:

- Explain the benefits of a free press.
- Identify conflicts between freedom of the press and such other values as national security.
- Take and defend a position on a current issue related to freedom of the press.

Time Required: 2 class periods

Materials and Preparation: You will need copies of Handout 7 as well as a selection of articles dealing with press censorship during wartime. Several possible references are listed at the end of the activity. Handout 8 is provided an an optional follow-up activity.

Procedure:

1. Review with students the First Amendment guarantee of freedom of the press: "Congress shall make no law...abridging the freedom of speech, or of the press." Ask: Does this cover TV news? What other media are covered? (Movies, documentaries, videos, radio, tabloids, magazines, books, pamphlets, etc.) Ask students what they think a free press really means to them. Are there circumstances in which they would favor censorship?

2. Ask students whether they would support censorship in times of war. Ask them to brainstorm reasons for and against censorship during war. You might use the following quotations to stimulate discussion:

> In time of war, the truth is so precious it must be attended by a bodyguard of lies.—
> Winston Churchill
>
> The days when statesmen and journalists coexisted in an atmosphere of trust and shared confidences have given way to a state of almost perpetual inquest which, at its worst, can degenerate into a relationship of hunter and hunted, deceiver and dupe.—
> Henry Kissinger

3. Distribute Handout 7 and allow time for students to read the column, which appeared the day war started in the Persian Gulf in January 1991. Point out that Nessen has been both a reporter and a presidential press secretary. Which viewpoint is he representing in this article? How might he have responded to the article in the role of presidential press secretary? Allow time for a general discussion of the article.

4. Tell the class that they are going to take part in a debate on whether the press should be censored as described in Nessen's column. Key arguments in the debate will revolve around the importance of the various costs and benefits of controlling the flow of information through censorship. Some of these costs and benefits should be among the items students listed in step 2 above.

5. Explain that students will not know until the following day which side they will be asked to argue on; thus, they must prepare themselves by learning the best arguments for each side of the debate. Make resources for additional reading available and allow the rest of the class period for research and discussion. Allow students to work and talk in small groups, as this process will help them develop and refine arguments on both sides of the issue.

6. At the beginning of the next class period, divide the class into four groups—one to present the initial case for controlling information, one to present the initial case for press freedom, one to rebut the case for censorship, and one to rebut the case for complete press freedom. Allow approximately 10 minutes for the groups to prepare their arguments and decide on speakers. The rebuttal groups will have to anticipate the other side's arguments and plan their responses accordingly; some last-minute adjustments may therefore be needed depending on the actual arguments presented. Inform the groups that they will each have five minutes to present their arguments.

As an alternative to the debate, you might divide the class into three groups, one representing the press, one the people, and one the government. Each group of students should develop and present the arguments they think their assigned group would make. Each group could be given four minutes to present their views, plus two minutes to rebut the positions taken by the other groups.

7. Conduct the debate, allowing some time after the formal presentations for less structured discussion. Conclude the discussion by asking students to vote on the following proposition:

> Resolved: The government was justified in restricting access to information during the Persian Gulf War.

8. As an evaluation device, you might ask students to write a brief essay explaining the reasons for their vote on the resolution.

Enrichment/Extension:

1. Invite one or more journalists to class to discuss their views on what limits operate on reporters and media. How much do journalists consider the public's right to know? the nation's best interests?

2. Handout 8 presents an optional activity designed to stimulate interest and research into student press rights, focusing particularly on the landmark case *Hazelwood School District v. Kuhlmeier*. When students have researched the case, they may prepare editorial cartoons expressing their views on the issue.

3. Some writers and educators have said that people function in seven social roles: self, member of social groups, citizen, worker, friend, family member, and consumer. Present these seven roles to students and have them brainstorm kinds of information the press could provide that would be useful to a person in each of those roles. For example, humorous articles or cartoons might be useful to the self in maintaining a healthy mental balance. Information about testing of new products might be useful in acting as a consumer. Information about political events or new technological developments that may affect the environment might be useful to the citizen.

Divide the class into four groups, assigning one to newspapers, one to newsmagazines, one to television news, and one to radio news. Each group's task is to determine what roles the press is most helpful to people in fulfilling. Groups may want to create a chart on which they can keep track of the stories, column inches, or minutes of news devoted to each area (note that the roles are not mutually exclusive; a story could be useful to a person in several roles). What kinds of stories do not seem to fit any role? Why do they continue to be covered? In what areas does the press do an especially good job?

References

The following are a few magazine articles and editorials on censorship in wartime; all appeared during or shortly after the Persian Gulf War, as these materials went to press. Numerous newspaper articles or columns were also written on those topics during the war. In addition, it is likely that more articles will appear as a longer-range perspective on press coverage and censorship is gained.

Andrews, Peter, "The Media and the Military," *American Heritage* (July/August 1991), pp. 78-85.

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"Censored," *The New Republic* 204 (February 11, 1991), pp. 16-17.

Eastland, Terry, "Dispatches," *The American Spectator* 24 (April 1991), pp. 28-29.

"The Filtered War," *New Statesman* 4 (April 5, 1991), p. 516.

Fore, William F., "Analyzing the Military-News Complex," *Christian Century* 108 (April 17, 1991), p. 57.

"Just the Good News, Please," *The Progressive* 55 (February 1991), pp. 25-27.

"Just Whose Side Are They On?" *Time* 137 (February 25, 1991), p. 52.

Katz, John, "The War at Home: How the United States Military Achieved Air Superiority Over the Nightly News as Well as Over Iraq," *Rolling Stone* (March 1, 1991), pp. 93-95.

Lapham, Lewis H., "Trained Seals and Sitting Ducks," *Harper's* 282 (May 1991), pp. 10-15.

O'Sullivan, Gerry, "The Free Press—Every Military Should Own One," *The Humanist* 51 (May-June 1991), pp. 39-42.

"The Other War: The Press vs. the Pentagon," *Scholastic Update* 123 (March 27, 1991), pp. 21-23.

"Pressing Freedom," *The Nation* 252 (May 6, 1991), pp. 579-580.

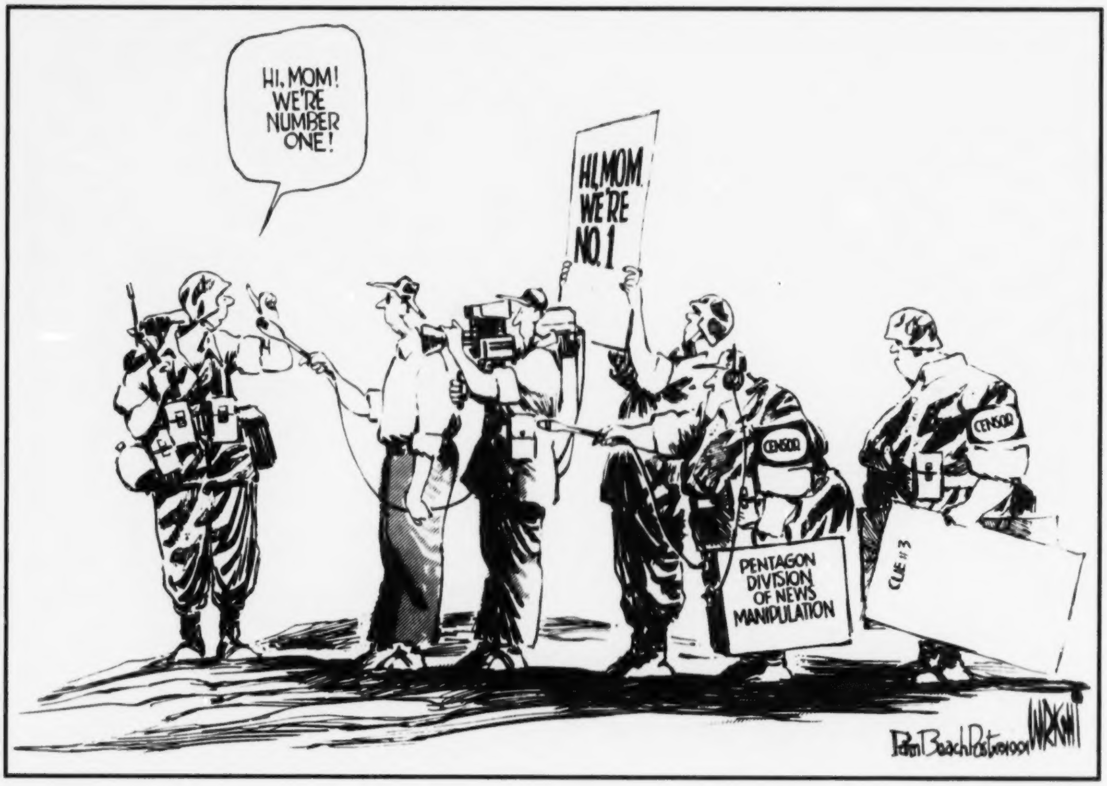
"Showdown at 'Fact Gap'," *Newsweek* 117 (February 4, 1991), pp. 61-62.

Shuger, Scott, "General Failure: What the Press Doesn't Tell You About America's Military Leaders," *Washington Monthly* 23 (March 1991), pp. 11-20.

"TV War Coverage Run Amok," *Insight* 7 (February 11, 1991), p. 64.

"War Stories," *Common Cause Magazine* 17 (March-April 1991), pp. 18-24.

Who Controls War News?


HI, MOM! WE'RE NUMBER ONE!
HI, MOM. WE'RE NO. 1
CENSOR
CENSOR
PENTAGON DIVISION OF NEWS MANIPULATION
CUE #3
Palm Beach Post 1991 WRIGHT

By Ron Nessen

The Pentagon has won the last battle of the Vietnam War. It was fought in the sands of Saudi Arabia, and the news media were the defeated enemy.

For the past two decades, a bitter resentment has smoldered among military officers that free-roaming, critical reporters undermined public support for the Vietnam War and thereby forced the Pentagon to accept defeat there. Never again should the press be allowed open coverage of Americans at war, was the lesson of Vietnam for those officers.

They tried with only mixed results to impose tight restrictions on reporting during the invasions of Grenada and Panama. But in the Persian Gulf, they have succeeded at last in imposing total control over what the world will see, hear and read if there is war.

True, it's not quite as total as they originally wanted. Angry protests from Washington news bureau chiefs persuaded the Pentagon to rescind a bunch of silly and restrictive ground rules it had promulgated, including requirements of physical fitness tests for journalists, a ban on covering religious services and a prohibition against "ambush interviews" of military personnel entering or leaving a "public place."

But what the Pentagon refuses to drop is the ground rule dictating that reporters and photographers in Saudi Arabia "must remain with your military escort at all times."

Cartoon used by permission of Don Wright, *The Palm Beach Post*. Article used by permission of Ron Nessen, Vice President, News, NBC Radio/Mutual Broadcasting System.

Even more chilling is the Pentagon's refusal to drop this decree: "In the event of hostilities, pool products will be subject to security review prior to release."

That's obfuscating military jargon for: "There will be censorship." Every correspondent, photographer and camera operator covering the war in a press pool must submit his or her copy and pictures to a military public affairs officer on the scene for approval before transmitting it back home.

If the public affairs officer censors a story or picture, and the journalist protests, the offending item "will be expeditiously hand-carried to JIB (Joint Information Bureau) in Dhahran for review," according to the ground rules. And if the censorship is upheld at JIB, it can be appealed to OASD-PA (Office of the Assistant Secretary of Defense for Public Affairs) at the Pentagon, who will discuss it with the appropriate bureau chief.

Great if you're covering the war for a monthly magazine or, better yet, for an annual review, but useless if you're covering it for a network or daily newspaper.

The Pentagon insists that its censorship plan is designed only to screen out information that would jeopardize a military operation or the security of forces in the Persian Gulf. "Material will not be withheld just because it is embarrassing or contains criticism," the ground rules claim. Uh huh.

In fact, the Defense Department actually toughened its earlier ground rules to prohibit publication of embarrassing and critical information such as "details of major battle damage or major personnel losses" as well as "operational or support vulnerabilities."

As a TV correspondent for NBC, I spent five tours reporting from Vietnam. The Pentagon's "Media Ground Rules" for Saudi Arabia almost make me nostalgic for those good old days in Saigon.

In Vietnam, there were no omnipresent military escorts.

To get to the fighting, you got from the Caravelle Hotel in Tan Son Nhut airbase by taxi or in your rented jeep or on your motorscooter.

You hitched a flight with a friendly military pilot, or even bought a ticket on a commercial flight of Air Vietnam and hopped in with an obliging Huey or deuce-and-a-half truck driver for the last miles to the battle.

And when it was time to file, you simply transmitted the film, broadcast radio spots from the ancient PTT studios or telexed your copy directly to the home office.

There were no censors.

But that was then, and this is now. In Saudi Arabia, Pentagon officials have the press right where they want us: under their control.

If war comes to the Persian Gulf, I believe the Military will keep reporters far from the fighting for days or weeks. They tried that in Panama with limited success.

But it should be easy in Saudi Arabia, since the reporters there are almost totally dependent on the military for transportation, communication and access. And even when the reporters are shown around by their military escorts and spoon-fed sanitized information by the JIB and the OASD-PA, everything they write and broadcast will be subject to censorship.

The Pentagon apparently believes that by allowing only officially sanctioned stories to be transmitted, support of the American people for the war will be ensured.

I think the "Media Ground Rules" are likely to have the opposite effect. Knowing that the Pentagon has assigned some colonel in some air-conditioned trailer in Riyadh to serve as the editor-in-chief for war coverage for every network, newspaper and magazine in America is likely to make readers and listeners highly suspicious of the reports.

As well it should.

Here's a deal for you, Secretary Cheney and General Powell: You fight the war, we'll cover the war, and never the twain should meet.

Ron Nessen, President Ford's press secretary, is vice president for news of NBC Radio-Mutual Broadcasting.

Censorship and Students

The quotations below are from the majority and dissenting opinions from a 1988 Supreme Court case on student press rights. Read the quotations; then find out more about the case to answer the questions that follow.

Majority Opinion

Written by Justice White; Chief Justice Rehnquist and Justices O'Connor, Scalia, and Stevens concurring

A school need not tolerate speech that is inconsistent with its basic education mission, even though the government could not censor similar speech outside the school. [Educators may exercise] editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical, concerns.

Dissenting Opinion

Written by Justice Brennan; Justices Marshall and Blackmun concurring

Instead of teaching children to respect the diversity of ideas that is fundamental to the American system and that our Constitution is a living reality, not parchment preserved under glass, the court today teaches youth to discount important principles of our government as mere platitudes.... The young men and women of Hazelwood East expected a civics lesson, but not the one the court teaches them today.

1. What Supreme Court decision do you think these quotations are from?
2. Find out more about the case. In the space below, create an editorial cartoon showing your views on the issue.

8 Freedom of Assembly

Introduction:

This lesson takes a closer look at how the freedom of assembly guaranteed by the First Amendment can be controversial. "Assembly" is a neutral word, but "protest demonstration" is far more loaded with connotation. In this lesson, students use a primary document to examine one instance in which a protestor was, in fact, jailed for his actions. In a letter to other members of the clergy, Dr. Martin Luther King, Jr., explained the reasons he and others demonstrated in Birmingham, Alabama. Students interpret King's letter to understand the rationale for this tactic to advance civil rights. They also evaluate the role of police and how value conflicts arise concerning protest demonstrations.

Objectives: At the conclusion of this lesson, students will be able to:

- Explain how the right of assembly relates to the idea of social protest.
- Identify the reasons for the civil rights protest demonstrations.
- Discuss value conflicts that may arise as citizens seek a redress of grievances by changing government policy.
- Evaluate possible courses of action to bring public attention to social issues.

Time Required: 1-2 class periods

Materials and Preparation: You will need a copy of Handout 9 for every student.

Procedure:

1. Review the concept of freedom of assembly. The First Amendment says: "Congress shall make no law respecting...the right of the people peacefully to assemble...." Ask students for examples of reasons people might want to assemble. If they do not bring it up, ask for *political* reasons for assembly (e.g., interest group meetings, city council or legislative hearings, political debates, public hearings, etc.). Make sure that the idea of assembling *in protest* is introduced, using recent local or state examples to make the point.

2. Break the class into ten small groups with students of varying abilities in each group. Distribute copies of the handout, asking students to read the excerpts from King's "Letter From a Birmingham Jail" and discuss the questions in their groups.

3. Ask for volunteers to do a dramatic reading of King's letter. Volunteers should stand before the class, each reading one paragraph. Encourage them to use emotion and emphasis and to speak clearly and persuasively.

4. Begin class discussion of the ten questions. Give each group the lead in answering one question. Then open the discussion to the rest of the class. To be sure the class makes full use of the letter, ask such questions as: What exactly did King say about that? What did he mean by that?

In answering the questions, students should mention the following points:

1. Free expression of religion, since King believed blacks have been denied their "God-given rights."
   Freedom of speech, since he publicly called for civil rights at the demonstrations.
   Freedom of assembly, since he organized the demonstrations.
   Freedom to petition the government for redress of grievances, which was one goal of King's protest.

2. Constitutional rights would include the Bill of Rights, especially those in the First Amendment, voting rights, equal protection of the laws, and due process.
   God-given rights probably would include peace, brotherhood, freedom of belief and expression, equality, and dignity.

3. He was demanding freedom and justice too long denied. He was trying to let people everywhere know what conditions blacks faced in their lives. He wanted to show the public how his protests were related to the rights others already enjoyed.

4. Blacks had been told many times to wait for change, which never happened. He also said freedom is never given by oppressors unless the oppressed demand it. The demonstrations were demanding freedom now.

5. Patience and waiting; negotiation and other less vocal, less public actions like letters to the editor or lobbying city councils or legislatures.

6. Maintaining law and order; protecting the public from disturbances and violence.

7. Sometimes a permit is required for large assemblies. Without a permit the gathering may be unlawful. Protests that appear likely to lead directly to unlawful acts, such as rioting, arson, or physical violence, are also unlawful. Emotional demonstrations may start out lawful, but turn dangerous; the police must judge how the participants and observers are behaving.

8. Many laws and conditions enforced segregation. A few mentioned in the excerpted letter include: the right to protest publicly without police harassment; humane treatment while jailed; eliminating all vestiges of segregation; preventing lynch mobs with real justice under law; and breaking the trap of poverty.

9. The urgency of blacks' demand for equality was in conflict with the belief in slow change.

10. "Sacred values in our Judeo-Christian heritage"; non-violence; democracy; "the American dream." King felt both sides respected the law, though he felt compelled to break "unjust laws."

5. Conclude by having the students explain why King's demonstrations raised such powerful fears and emotions on both sides of the issue. Students might consider whether King's arguments supporting protests would apply equally to such groups as the Ku Klux Klan and the American Nazi Party.

Extension/Enrichment:

1. Have each student write a one-paragraph summary of King's reasons for demonstrating in Birmingham. Using their own sentences, they should incorporate King's words: *demonstrate, justice, impatience, rights, despair, oppressed,* and *democracy*.

2. Students could interview local citizens who have used their First Amendment rights and compare their reasons for taking action with King's.

"Letter from Birmingham Jail"

American government often changes because a political issue or social condition is protested publicly. Americans have a long tradition of gathering at city hall or the steps of Congress to demonstrate for or against an idea.

One of the most important movements in the United States has been for civil rights; that is, economic, political, and social equality for African-Americans. In the 1960s much of the momentum for the civil rights movement came from public demonstrations. Yet demonstrators were often jailed for disturbing the peace and similar offenses. In one such case in 1963, Dr. Martin Luther King, Jr., and others were jailed in Birmingham, Alabama. King and the others were strongly criticized, even by other members of the clergy. So King wrote a letter that explained his reasons for rallying local residents to demonstrate against segregation.

As you read the portions of King's letter on the following pages, try to decide exactly why he and others used protest methods they knew were likely to send them to jail. Then, based on what you have read and what you know of the civil rights movement in the 1960s, answer the following questions.

Questions:

1. What language in the First Amendment is relevant to King's protest actions? Explain why.
2. When King said "constitutional and God-given rights," what do you think he meant?
3. What did King hope to accomplish by demonstrating publicly?
4. King wrote that he had "no alternative" but to demonstrate. Explain why he reached that conclusion.
5. Instead of demonstrations, what choices would his critics have recommended?
6. In the face of large demonstrations, what were the legal responsibilities of the Birmingham police?
7. How can police tell the difference between lawful protest and unruly or dangerous gatherings?
8. What laws and social conditions did King want changed?
9. What values did King feel were in conflict between himself and those who criticized him?
10. Which shared values did King use to convince critics of the rightness of his position?

April 16, 1963

My Dear Fellow Clergymen:

While confined here in the Birmingham city jail, I came across your recent statement calling my present activities "unwise and untimely"....I think I should indicate why I am here in Birmingham....I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. What ever affects one directly, affects all indirectly....

You deplore the demonstrations taking place in Birmingham. But your statement, I am sorry to say, fails to express a similar concern for the conditions that brought about the demonstrations....It is unfortunate that demonstrations are taking place in Birmingham, but it is even more unfortunate that the city's white power structure left the Negro community with no alternative.

In any nonviolent campaign there are four basic steps: collection of the facts to determine whether injustices exist; negotiation; self-purification; and direct action. We have gone through all these steps in Birmingham....Negro leaders sought to negotiate with the city fathers. But the latter consistently refused to engage in good-faith negotiation....

UPI/Bettmann Newsphotos

As in so many past experiences, our hopes had been blasted, and the shadow of deep disappointment settled upon us. We had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community....

You may well ask: "Why direct action? Why sit-ins, marches and so forth? Isn't negotiation a better path?" You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community

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Excerpts from "Letter from Birmingham Jail" in *Why We Can't Wait*, by Martin Luther King, Jr. Copyright © 1963, 1964 by Martin Luther King, Jr. Reprinted by permission of Harper Collins Publishers, Inc.

which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored....

We know through painful experience that freedom is never voluntarily given by the oppressor, it must be demanded by the oppressed....For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait!" has almost always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied."

We have waited for more than 340 years for our constitutional and God-given rights....Perhaps it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will...when you have seen hate-filled policemen curse, kick, and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty....when you take a cross-country drive and find it necessary to sleep night after night in the uncomfortable corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"...then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience....

You express a great deal of anxiety over our willingness to break laws....For instance, I have been arrested on a charge of parading without a permit. Now, there is nothing wrong in having an ordinance which requires a permit for a parade. But such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the First-Amendment privilege of peaceful assembly and protest....

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law....

Oppressed people cannot remain oppressed forever....If one recognizes this vital urge that has engulfed the Negro community, one should readily understand why public demonstrations are taking place. The Negro has many pent-up resentments and latent frustration, and he must release them. So let him march; let him make prayer pilgrimages to the city hall; let him go on freedom rides—and try to understand why he must do so....

Before closing I feel impelled to mention one other point in your statement that has troubled me profoundly. You warmly commended the Birmingham police force for keeping "order" and "preventing violence." I doubt that you would have so warmly commended the police force if you had seen its dogs sinking their teeth into unarmed, non-violent Negroes. I doubt that you would so quickly commend the police if you were to observe their ugly and inhumane treatment of Negroes here in the city jail; if you were to watch them push and curse old Negro women and young Negro girls....

I wish you had commended the Negro sit-inners and demonstrators of Birmingham for their sublime courage, their willingness to suffer and their amazing discipline in the midst of great provocation. One day the South will recognize its real heroes....They will be the young high school and college students, the young ministers of the gospel and a host of their elders, courageously and non-violently sitting in at lunch counters and willingly going to jail for conscience' sake. One day the South will know that when these disinherited children of God sat down at lunch counters, they were in reality standing up for what is best in the American dream and for the most sacred values in our Judeo-Christian heritage, thereby bringing our nation back to those great wells of democracy which were dug deep by the founding fathers in their formulation of the Constitution and the Declaration of Independence.

Yours for the cause of Peace and Brotherhood,

Martin Luther King, Jr.

9 Petitioning Government

Introduction:

This lesson provides a hands-on experience for students. They select an issue that is important to them and study it sufficiently to formulate an informed opinion. Students then write to an appropriate government official expressing their opinion and asking for specific action or support. Students also study the responses they receive to judge their own effectiveness and the responsiveness of the petitioned officials. The lesson as a whole is designed to make contact with government less alien and more a practical reality for students who too often cannot envision the meaning of "petition the government for the redress of grievances."

Objectives: At the conclusion of this lesson, students will be able to:

- Form an opinion on a public issue.
- Understand the role of citizens in affecting government action via the right to petition.
- Write an effective letter to a governmental official.

Time Required: Parts of several class periods separated by several weeks.

Materials and Preparation: Decide whether your class is best suited to individual or group projects. If you choose groups, keep them small—two or three persons each. If possible, arrange for students to word process their letters on school letterhead. You may want to make copies of Handout 10 for all students.

Procedure:

1. Near the end of a class period several days before you will do the main part of the lesson, review with students the idea that the First Amendment guarantees the people's right to access their government ("to petition government for the redress of grievances"). Define the following words:

- *Petition* means making a request of government.
- *Redress* means to make things right, to correct a wrong.
- *Grievances* broadly includes complaints, errors, and injustices.

Ask the students to paraphrase the petition clause and give examples.

2. Assign students to watch the news for several nights to look for stories that reference petitioning activities going on in their community, the nation, or the world. Look for individuals trying to get a law changed, a new program adopted, or taxes lowered; testifying on zoning issues; protesting or rallying around a specific issue. For each story selected, have class members identify:

- Who is doing the petitioning—an individual, a neighborhood group, an interest group?
- What exactly is being asked for? Be specific.
- Who is being petitioned? The city council, Congress, the President?
- How effective is this petitioning?

3. Instruct the class that they (individually or in groups) will select an issue on which to petition the government. (You may wish to focus on First Amendment issues, but this is not necessary.) Work with students to make sure the issue is specific enough for government to do something about it. For example, "everyone should be less uptight about music" can be strengthened to "Congress should pass no law censoring rock music."

4. Depending on resource materials available to your class, students should be given in-class and out-of-class time to write brief (one-page) position papers on the issue. The paper should include a statement of the issue; arguments used in debating that issue—pro *and* con; what action the student would like to see happen; who in government is or should be considering that action. The time to develop this paper depends on the students' abilities and interest. Allow 1-2 class periods.

5. Next, students should convert their position papers into formal letters to the appropriate government official. *Each letter should spell out clearly the issue at stake.* Handout 9 may be helpful to students in writing their letters. Let students use a directory of state legislators and state agencies, or the phone book for Congressional representatives or city council members as necessary. They must find the actual name of the responsible government official to whom they will address their letter of petition. (Avoid general letters to the president or the governor unless an issue is actually before them, as in new legislation to sign or veto.) This process should take no more than a class period, since the arguments have already been identified in the position paper.

6. Prior to completing the letters, use a peer review process to make sure that each draft letter is succinct, articulate, and as persuasive as possible. Pair students for this session, allowing 30 minutes for discussion and rewriting.

7. To avoid flooding public officials with mail, have the class select five letters to actually mail. They may select the letters based on writing quality, topic, or strength of commitment the student writers feel. If possible, give students official school letterhead to use in their letters, inserting the class name and hour to the return address. Arrange for them to type or word process their letters.

8. When you have received several responses, distribute them. Have students read through the responses, determining the following:

- Whether the letter responded to their request.
- Whether the official stated a position on the issue.
- Whether the official agrees or disagrees with the action requested.
- What reasons were given for the official's opinion.

If an official concurs, they probably will say so, but many letters will likely be form letters, thanking them for the letter, saying something to the effect that the matter is being studied. In other cases, the official may disagree but say so in very calculated or ambiguous terms. Students should dissect the tone and content of the official responses and draw conclusions from the exercise.

Extension/Enrichment:

1. A continuing correspondence for the semester may be developed. The students may reply to a response if the answer was unsatisfactory. Those who got no response may write, saying that and again requesting an answer. Students may pick another appropriate official to petition on the same issue. The goal is to broaden the pool of responses and give the students more familiarity with the petition process. Debrief the response mail regularly.

2. Have a FORMER elected official from the city council, county commissioners, or other local body meet with the class. If no such person is readily available, a staff person who actually screens calls and letters might be. (A former official may be more candid with the class.) The class and official should discuss how an elected official decides *whose petition or requests* get their attention first. Focus on how the ordinary citizen can be most effective in getting attention and being taken seriously.

Tips for Writing to Public Officials

1. If possible, type your letter. If you cannot do that, write very neatly. Put your return address on the letter, since the envelope might get thrown away.
2. Be specific about the topic of your letter. If you are writing about legislation, give the name of the bill and the representatives who are sponsoring it. Discuss only one issue in each letter you write.
3. Courteously explain why you are writing. Your own personal experience is the best supporting evidence you can give for your position. Explain how the issue affects you, your family, or your community. Or describe how you think the issue would affect your state or the nation.
4. Be brief, but not so brief that your point is lost. A one-page letter is ideal. More than two pages is too much.
5. Show that you are familiar with the official's past positions or actions related to the issue. If there are actions or ideas you can agree with, mention this fact. Thank the official for positive actions.
6. Mention your occupation and any group you belong to that has a position on this issue. However, don't simply parrot the positions of the group. Express your ideas in your own words and show that you have done research into the issue.
7. Do not be rude or make threats. It will *not* help you advance your ideas.
8. Ask for a reply letter describing the official's position. You have a right to know what your representatives think and plan to do about important issues.
9. Don't forget to sign your name.

10 The First Amendment in its Third Century

Introduction:

This lesson is designed to integrate students' understanding of how each of the elements of the First Amendment functions today and its meaning for the future. Students rewrite each First Amendment clause to clarify or modify its language to reflect current interpretations. They also judge the merits of the final product, comparing it to the original.

Students need to be familiar with all the phrases in the First Amendment to successfully complete this exercise. It is therefore a good conclusion for a unit on freedoms and rights.

Objectives: At the conclusion of this lesson, students will be able to:

- Interpret the language of the First Amendment
- Evaluate alternative wordings of written guarantees of fundamental freedoms.
- Integrate their understanding of how the First Amendment has been expanded and limited by historical precedent.

Time Required: 2 class periods

Materials and Preparation: If you choose to use the article, you will need a copy of Handout 11 for every student. If you wish to show the First Amendment Congress video, *Forty-Five Words of Freedom*, you will need a VCR and monitor.

Procedure:

1. If you think your class can handle the satirical column presented in Handout 11, distribute the handout. Remind students that political satire is a time-honored method of raising important questions by ridiculing something the writer finds silly or evil. Ask for an example of humorous exaggeration in the Quillen article. Ask for an example of an important issue he raises. What message(s) is the column intended to convey?

2. Ask students to use the Quillen column and what they have learned in this unit to brainstorm some of the threats to the First Amendment today. Several discussed in the First Amendment Congress video, *Forty-Five Words of Freedom*, are conflicts over censorship, national security, obscenity/pornography, privacy, commercial speech, and distrust of the media.

3. Tell the class they will have a chance now to rewrite the First Amendment in a serious vein (unlike the Quillen satire). Their goal is to construct an accurate, detailed version of the First Amendment that reflects how it is being interpreted and applied after 200 years. Write this goal on the board.

4. Give the students the example of the first part of the Amendment, "Congress shall make no law respecting..." Ask them how this *really* is interpreted today. They should be able to recall that given the Fourteenth Amendment and legal precedents today it might read "Congress, the President, and the States...." Then the "...shall make no law..." might be changed to read "...shall make no law except as specifically allowed in this First Amendment." Such examples should give the students the idea that they are to write language that spells out the implicit understandings we now have about the freedoms in question.

5. Divide the class into six groups, assigning each one of the six freedoms in the First Amendment. The six groups should work separately to draft language they will then bring back to the class as a whole. Encourage debate within the group by advising them that each member needs to be able to defend the exact language before the rest of the class when the class reassembles. (As an alternative, students can work individually on the rewriting.)

6. After 15-20 minutes, reconvene the class. Each group should report on its draft in the order of the phrases in the First Amendment. Ask one person from the first group (establishment clause) to read their draft; then ask another to explain their reasoning. If the changes are many, ask a third student in that group to explain the second half of the reasoning. Open up the proposal for class discussion. As discussion reaches a resolution or majority opinion, have another member of the group write the draft on poster paper or the chalkboard.

7. Proceed through each of the phrases. Some, like freedom of speech, will take longer. Pace the discussion or debate according to how much time (1-2 days) you wish to allow.

8. When the rewritten amendment is completed, have the class assess the draft as a whole. How many students would vote to replace the original First with their current version? Why or why not? What has been gained by the specificity of the draft version? What is lost? What advantages does the original First Amendment have that the draft lacks? How well will this language hold up through the First Amendment's third century?

9. To conclude the lesson, you might show the video, *Forty-Five Words of Freedom*. The 20-minute video provides highlights of the 1988 National Congress, at which participants (including journalists, experts on the First Amendment, public officials, students, and citizens) took up the question of whether Americans today would choose the same 45 words that the Framers used to guarantee freedom of expression and religion. The delegates left the First Amendment intact, even expanding some of its provisions.

Enrichment/Extension:

Your class might plan an informational presentation on the First Amendment for other students in the school. The presentation could be followed by a simulated First Amendment Congress in which students decide whether to readopt the First Amendment for the 21st century. The First Amendment Congress plans to hold student congresses on this issue in upcoming years; contact the First Amendment Congress for more information.

Handout 11

A New First Amendment

By Ed Quillen

The old First Amendment has served America fairly well since Dec. 15, 1791, but many people on all sides of the political fences have decided that changes are necessary. The latest call for an overhaul comes in the wake of the most recent Supreme Court ruling that flag burning is a constitutionally protected form of free expression, and thus cannot be outlawed unless the Constitution is changed.

To refresh your memory, here's the traditional 45-word Jefferson-Madison version, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

That short, ancient text should be brought into line with enlightened modern thinking, and here's how it might look:

Congress shall make no law:

1. Respecting an establishment of religion

1-a) Excepting that all candidates for public office who want votes from the Bible Belt must declare that they favor the teaching of "creation science" in public schools and advocate daily prayers in the classroom.

2. Or prohibiting the free exercise thereof;

2-a) However, Native Americans who are in prison cannot ingest their traditional sacraments.

3. Or abridging the freedom

A. Of speech,

3A-a) Excepting that the burning or other destruction of an American flag is treason, unless done without intent to convey a message.

3A-b) Excepting all utterances which may be construed as racist, sexist, or otherwise demeaning to any group which has attained "victimized" status as specified in Amendment XXVII.

3A-c) Excepting any recorded song whose lyrics may be offensive to a Senator's wife.

B. Or of the press,

3B-a) So long as the press does not publish any photos or stories which may be construed by any psychological professional as an inspiration to impure thoughts.

3B-b) Excepting that anyone indulging in free expression shall forever be subject to expensive harassment by swarms of lawyers with specious cases.

C. Or the right of the people to peaceably assemble,

3C-a) Providing that said people have received appropriate permits and have posted suitable insurance and other bonds as may be required by the custodian of the public area proposed for assembly.

D. And to petition the Government for a redress of grievances.

3D-a) For ease in determining which petitioned grievances are worth redressing, this right will be construed to apply only to those persons or corporations who:

3Da-i) Have contributed more than $100,000 to the re-election campaign of an incumbent Representative or Senator, or

3D-a-ii) Provide honorariums in excess of $10,000 per appearance.

There.

Even as we've brought part of the Bill of Rights up to contemporary standards, we've managed to keep all the original words. Thomas Jefferson would be so proud.

Ed Quillen of Salida is a former newspaper editor whose column appears Tuesdays and Sundays.

Source: *The Denver Post* (June 17, 1990).

Bibliography

The following is a brief "starter list" of resources on the First Amendment and Bill of Rights. The list is organized into three sections: "Curriculum Resources," which includes teacher's guides, lesson plans, and student readers, including a limited number of trade books; "Media Materials," which includes audio- and videotapes as well as computer software; and "Background Reading," which includes works that could help teachers extend their own understanding of the First Amendment and Bill of Rights.

For more extensive bibliographic listings, see the book by Patrick and Leming listed below. *Update on Law-Related Education*, a journal pubilshed three times each year by the American Bar Association, is a useful resource for keeping up to date with new materials and Supreme Court decisions.

Curriculum Resources

America's Conscience: The Constitution in Our Daily Life (New York: Anti-Defamation League, 1987). Reproducible activities focusing on the application of the Bill of Rights to everyday life.

"Bill of Rights," special issue of *Magazine of History for Junior and Senior High School Teachers* V, no. 1 (Summer 1990). Contains several articles on First Amendment issues, as well as lessons on religious freedom, the establishment clause, and school prayer.

Bill of Rights in Action (Los Angeles: Constitutional Rights Foundation, periodical). Free newsletter providing teaching materials and background readings on the Bill of Rights and related issues.

Eveslage, Thomas, *The First Amendment: Free Speech and a Free Press* (Iowa City, IA: Quill and Scroll Society, 1985). 11 chapters containing readings, worksheets, and activities look at such topics as the role of free exchange of information in a democratic society, the role of courts in protecting the right to expression, and limits on free expression.

"Freedom Has a Name: The Bill of Rights," special issue of *Update on Law-Related Education* (Spring 1991). Contains numerous substantive articles and teaching strategies on the Bill of Rights.

From the School Newsroom to the Courtroom (Los Angeles: Constitutional Rights Foundation, 1989). Complete simulation on the student press freedom case, *Hazelwood v. Kuhlmeier.*

Haynes, Charles C., *Religious Freedom in America: A Teacher's Guide* (Silver Spring, MD: Americans United Research Foundation, 1986). Provides teachers with a variety of source materials for integrating the story of religious liberty into the curriculum.

Hentoff, Nat, *American Heroes: In and Out of School* (New York: Delacorte Press, 1987). Stories of young people and educators who have fought to protect First Amendment freedoms.

Hentoff, Nat, *The First Freedom: The Tumultuous History of Free Speech in America* (New York: Delacorte Press, 1988, rev. ed.). Readable analysis of cases related to the freedom of speech.

Hudson v. Daily Metropolis: A Freedom of the Press Mock Trial (Washington, DC: National Institute for Citizen Education in the Law, 1988). A mock trial balancing a father's right to know where his child is being held against the confidentiality of a reporter's sources.

Lawson, Don, *Landmark Supreme Court Cases* (Hillside, NJ: Enslow, 1987). This collection includes several cases involving religion in schools, providing quotes from people involved as well as descriptions of the court decisions.

Lindop, Edmund, *The Bill of Rights and Landmark Cases* (New York: Watts, 1989). Eight case studies on the Bill of Rights, including cases on freedom of speech and the rights of young people.

Living Constitution Poster Series (New York: Anti-Defamation League, 1988). Several of these 15 posters illustrating the struggle for constitutional rights focus on First Amendment issues.

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National Archives and Records Administration, *The Bill of Rights* (Boca Raton, FL: Social Issues Resource Series, 1990). A unit on the Bill of Rights, emphasizing the use of primary source documents from the National Archives.

Patrick, John J., and Robert S. Leming, *Resources for Teachers on the Bill of Rights* (Bloomington, IN: ERIC Clearinghouse for Social Studies/Social Science Education, 1991). Sample lessons, copies of related documents, and extensive bibliographic listings.

Peck, Robert S., and Mary Maneman, *Speaking and Writing the Truth: Community Forums on the First Amendment* (Chicago: American Bar Association, 1985). Provides six scripts and background information on First Amendment issues.

Repa, Barbara Kate, ed., "First Amendment Rights," special section of *Social Education* (October 1990). Contains substantive discussions, opinion pieces, and classroom activities.

We the People (Calabasas, CA: Center for Civic Education, 1987). Comprehensive unit on the Constitution, including several lessons on First Amendment issues.

Weiss, Ann E., *The Supreme Court* (Hillside, NJ: Enslow, 1987). An overview of the Supreme Court's operation, history, and landmark cases.

Weiss, Ann E., *Who's to Know? Information, the Media, and Public Awareness* (Boston: Houghton Mifflin, 1990). An age-appropriate analysis of the importance of access to information in a democratic society.

Media Materials

The Constitution: For Adults Only? (New York: NBC News Productions, 1989). A 30-minute videotape examining the constitutional rights of teenagers; many actual cases are covered.

The Constitution: Relevant for Today? (Alexandria, VA: Close Up Foundation, 1987). Video program presenting students' views on diverse constitutional issues, including religion in schools.

The Constitution: That Delicate Balance (Chicago: Films Incorporated, 1984). Developed for PBS, this series of one-hour video programs includes "National Security and Freedom of the Press" and "School Prayer, Gun Control and the Right to Assemble."

Dateline 1787: The U.S. Constitution Convention (Chicago: National Radio Theatre, 1987). Audiocassettes. Radio programs modeled on a nightly news broadcast present debates at the constitutional convention, including those over the necessity for a bill of rights.

The First Amendment and the Ku Klux Klan: Here and Now (Culver City, CA: Social Studies School Service, 1989). This 12-minute videocassette examines the Kansas City case in which the KKK requested a program on the public access TV channel.

Game School Constitution (Neenah, WI: Game School Corporation, 1987). Board game focusing on the provisions of the Constitution and their impact on our society.

Great American Trials: Peter Zenger (Westminster, MD: Educational Enrichment Materials, 1982). Filmstrip/cassette program exploring the impact of the Zenger case on the American constitutional system.

Hoffman, Milton B., *American Viewpoint* (Stanford, CT: American TV and Communication, 1987). This video presents brief commentaries on the importance of the First Amendment.

New Tests of the First Amendment (New York: New York Times, 1980). Filmstrip/cassette focusing on First Amendment cases of the 1960s and 1970s.

The Research Companion: Supreme Court Decisions (Focus Media, 1987). This computer software combines a simulation with a database on landmark cases, many involving First Amendment rights.

Supreme Court Decision (Bridgeport, CT: Queue, 1986). Computer simulation involving a case of publishing seditious material.

This Is a Free Country (Washington, DC: Educational Excellence Network, 1991). Interctive computer-based lessons on rights and responsibilities of U.S. citizenship.

The United States Constitution: Document for Democracy (Chicago: Society for Visual Education, 1986). Color videocassette. Covers the constitutional convention and the application of the Constitution to contemporary issues.

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Constitutional Law Dictionary, Volume 1: Individual Rights (Santa Barbara, CA: ABC-CLIO, 1985). Summarizes landmark cases related to individual rights and defines words and phrases critical to understanding these rights.

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Haskel, Claudia A., and Jean H. Otto, eds., *A Time for Choices* (Denver, CO: First Amendment Congress, 1991). Essays on the amendments comprising the Bill of Rights.

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Inglehart, Louis, *Press Freedoms* (Westport, CT: Greenwood, Press, 1987). A history of freedom of the press from 4000 BC to the late 1980s.

Irons, Peter., ed., *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court* (New York: The Free Press, 1988). Case studies on Bill of Rights issues and the people who brought them before the Court.

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